



EUROPEAN NETWORK OF LEGAL EXPERTS
IN THE FIELD OF GENDER EQUALITY

The Implementation of Parental Leave Directive 2010/18 in 33 European Countries



EUROPEAN COMMISSION

Directorate-General for Justice and Consumers
Directorate D — Equality
Unit JUST/D1

*European Commission
B-1049 Brussels*

EUROPEAN NETWORK OF LEGAL EXPERTS IN THE FIELD OF GENDER EQUALITY

The Implementation of Parental Leave Directive 2010/18 in 33 European Countries

Maria do Rosário Palma Ramalho,
Petra Foubert and
Susanne Burri

Manuscript completed in February 2015.

The information contained in this report reflects, as far as possible, the state of affairs on 7 April 2014.

Production

Susanne Burri
Klaartje Hoeberechts
Titia Hijmans van den Bergh
Alice Welland

***Europe Direct is a service to help you find answers
to your questions about the European Union.***

**Freephone number (*):
00 800 6 7 8 9 10 11**

(*) The information given is free, as are most calls (though some operators, phone boxes or hotels may charge you).

This publication was commissioned by the European Commission under the framework programme PROGRESS (Decision 1672/2006/EC of the European Parliament and the Council, OJ L 315/1 of 15.11.2006). For more information on PROGRESS see:

<http://ec.europa.eu/social/main.jsp?catId=327&langId=en>

LEGAL NOTICE

This document has been prepared for the European Commission however it reflects the views only of the authors, and the Commission cannot be held responsible for any use which may be made of the information contained therein.

More information on the European Union is available on the Internet (<http://www.europa.eu>).

Luxembourg: Publications Office of the European Union, 2014

ISBN: 978-92-79-45836-1

DOI: 10.2838/957478

© European Union, 2015

© photos: www.morguefile.com

Table of Contents

Members of the European Network of Legal Experts in the Field of Gender Equality	iv	
Part I		
Executive Summary	1	
<i>Maria do Rosário Palma Ramalho</i>		
1. Purpose and scope of the Report	1	
2. The legislative context in European Union Law	2	
2.1. Primary and secondary legislation	2	
2.2. Soft law and policies of the European Union as regards the reconciliation of professional and family life	4	
2.3. Case law of the Court of Justice of the European Union	4	
3. Summary of the findings	6	
3.1. Context	6	
3.2. Implementation of Directive 2010/18	8	
3.3. Purpose and scope (Clause 1)	8	
3.4. Parental leave (Clause 2)	9	
3.5. Modalities of application (Clause 3)	13	
3.6. Adoption (Clause 4)	15	
3.7. Employment rights and non-discrimination (Clause 5)	17	
3.8. Return to work (Clause 6)	19	
3.9. Time off from work on grounds of force majeure (Clause 7)	21	
3.10. Final provisions (Clause 8)	22	
3.11. Sanctions (Article 2)	22	
3.12. Case law	23	
3.13. Practice and other relevant issues	24	
4. Conclusions	26	
Part II		
National Law: Reports from the Experts of the Member States, EEA Countries, Former Yugoslav Republic of Macedonia and Turkey	29	
AUSTRIA	<i>Martina Thomasberger</i>	29
BELGIUM	<i>Jean Jacquain</i>	39
BULGARIA	<i>Genoveva Tisheva</i>	46
CROATIA	<i>Nada Bodiroga-Vukobrat</i>	51
CYPRUS	<i>Lia Efstratiou-Georgiades</i>	59
CZECH REPUBLIC	<i>Kristina Koldinská</i>	62
DENMARK	<i>Ruth Nielsen</i>	67
ESTONIA	<i>Anu Laas</i>	72
FINLAND	<i>Kevät Nousiainen</i>	78
FRANCE	<i>Sylvaine Laulom</i>	86
GERMANY	<i>Ulrike Lembke</i>	92
GREECE	<i>Sophia Koukoulis-Spiliotopoulos</i>	98
HUNGARY	<i>Beáta Nacsa</i>	108
ICELAND	<i>Herdís Thorgeirsdóttir</i>	115
IRELAND	<i>Frances Meenan</i>	121
ITALY	<i>Simonetta Renga</i>	128
LATVIA	<i>Kristīne Dupate</i>	133

LIECHTENSTEIN	<i>Nicole Mathé</i>	140
LITHUANIA	<i>Tomas Davulis</i>	143
LUXEMBOURG	<i>Anik Raskin</i>	149
FYR of MACEDONIA	<i>Mirjana Najchevska</i>	153
MALTA	<i>Peter Xuereb</i>	158
THE NETHERLANDS	<i>Rikki Holtmaat</i>	163
NORWAY	<i>Helga Aune</i>	169
POLAND	<i>Eleonora Zielińska</i>	176
PORTUGAL	<i>Maria do Rosário Palma Ramalho</i>	185
ROMANIA	<i>Iustina Ionescu</i>	191
SLOVAKIA	<i>Zuzana Magurová</i>	197
SLOVENIA	<i>Tanja Koderman Sever</i>	202
SPAIN	<i>María Amparo Ballester Pastor</i>	206
SWEDEN	<i>Ann Numhauser-Henning</i>	213
TURKEY	<i>Nurhan Süral</i>	218
UNITED KINGDOM	<i>Aileen McColgan</i>	221
Annex 1 – Tables		229
AUSTRIA		227
BELGIUM		228
BULGARIA		229
CROATIA		230
CYPRUS		231
CZECH REPUBLIC		232
DENMARK		233
ESTONIA		234
FINLAND		235
FRANCE		236
GERMANY		237
GREECE		238
HUNGARY		239
ICELAND		240
IRELAND		241
ITALY		242
LATVIA		243
LIECHTENSTEIN		244
LITHUANIA		245
LUXEMBOURG		246
FYR of MACEDONIA		247
MALTA		248
THE NETHERLANDS		249
NORWAY		250
POLAND (I)		251
POLAND (II)		252
PORTUGAL		253
ROMANIA		254
SLOVAKIA		255
SLOVENIA		256
SPAIN		257
SWEDEN		258
TURKEY		259
UNITED KINGDOM		260

Annex II – Questionnaire	261
Annex III – Bibliography	267

Members of the European Network of Legal Experts in the Field of Gender Equality

Co-ordinator:

Susanne Burri, Utrecht University, the Netherlands

Assistant co-ordinator:

Alice Welland, Utrecht University, the Netherlands

Executive Committee:

Hélène Masse-Dessen, Barrister at the Conseil d'Etat and Cour de Cassation, France

Christopher McCrudden, Queen's University Belfast, the United Kingdom

Linda Senden, Utrecht University, the Netherlands

Susanne Burri, Utrecht University, the Netherlands

National experts:

Martina Thomasberger (Austria), Legal expert in the Vienna Chamber of Labour, Department for Social Security

Jean Jacquemain (Belgium), Free University of Brussels, Faculty of Law and Criminology

Genoveva Tisheva (Bulgaria), Bulgarian Gender Research Foundation

Nada Bodiroga-Vukobrat (Croatia), Professor, Head of Jean Monnet Department of European Public Law / University of Rijeka, Faculty of Law

Evangelia Lia Efstratiou-Georgiades (Cyprus), Advocate

Kristina Koldinská (Czech Republic), Charles University, Faculty of Law

Ruth Nielsen (Denmark), Copenhagen Business School, Law Department

Anu Laas (Estonia), Institute of Sociology and Social Policy, University of Tartu

Kevät Nousiainen (Finland) Helsinki University, Faculty of Law

Sylvaine Laulom (France), University Jean Monnet, Saint-Etienne, Faculty of Law

Mirjana Najchevska (Former Yugoslav Republic of Macedonia), Professor of Human Rights, American College – Skopje and University 'Ss. Cyril and Methodius', Institute for Sociological, Political and Juridical Research

Ulrike Lembke (Germany), University of Hamburg, Faculty of Law

Sophia Koukoulis-Spiliotopoulos (Greece), Attorney at Law

Beáta Nacsá (Hungary), Eötvös Loránd University, Department of Labour and Social Law

Herdís Thorgeirsdóttir (Iceland), Bifrost University, Faculty of Law

Frances Meenan (Ireland), Barrister, Four Courts, Law Library, Dublin

Simonetta Renga (Italy), Ferrara University, Faculty of Economics

Kristīne Dupate (Latvia), University of Latvia, Faculty of Law

Nicole Mathé (Liechtenstein), University of Vienna, Faculty of Law

Tomas Davulis (Lithuania), Vilnius University, Faculty of Law

Anik Raskin (Luxembourg), National Women's Council of Luxembourg

Peter G. Xuereb (Malta), University of Malta, Faculty of Law

Rikki Holtmaat (the Netherlands), Independent Legal Consultant Expert

Helga Aune (Norway), Attorney at law

Eleonora Zielinska (Poland), University of Warsaw, Faculty of Law and Administration

Maria do Rosário Palma Ramalho (Portugal), University of Lisbon, Faculty of Law

Iustina Ionescu (Romania), Independent Legal Advisor

Zuzana Magurová (Slovakia), Slovak Academy of Sciences, Institute of State and Law

Tanja Koderman Sever (Slovenia), Independent Legal Advisor

María Amparo Ballester Pastor (Spain), University of Valencia, Faculty of Law

Ann Numhauser-Henning (Sweden), Lund University, Faculty of Law

Nurhan Süral (Turkey), Middle East Technical University, Faculty of Economics and Administrative Sciences

Aileen McColgan (the United Kingdom), King's College London

Part I

Executive Summary

*Maria do Rosário Palma Ramalho**

1. Purpose and scope of the Report

I. The purpose of this report is to provide information on and present an analysis of the implementation of Parental Leave Directive 2010/18 as well as possible weaknesses and lacunae in the existing *acquis*. The focus of this report will be on the way the various types of family leave and other measures intended to promote the reconciliation of professional and family life are addressed and combined at national level and the extent to which the national approach is in line with EU law.

The topic of leaves aimed at facilitating the reconciliation of work, private and family life has been addressed in several reports of the European Commission's European Network of Legal Experts in the Field of Gender Equality (hereafter: Gender Network).¹ In this report, the main focus is on the implementation of the changes made by Parental Leave Directive 2010/18 to the previous Directive on the subject (Directive 96/34/EC²), at national level.

II. Reconciliation between professional and family life has been recognised as an important goal of the EU for some years now. Although to begin with it was developed to complement the protection of pregnancy and maternity given by Directive 92/85/EEC of 19 October 1992,³ in time the subject was recognised as an autonomous aim of EU social policies. This separation of the topic of reconciliation from the topic of pregnancy and maternity protection makes it more important to address the relationship between the legal provisions regarding maternity leave, parental leave and other related measures. This report will try to determine how the relationship between these subjects is structured and developed at national level.

On the other hand, since the earliest development of the subject of reconciliation of professional and family life at EU level, a link has been recognised between this subject and gender equality issues.⁴ This link is based on the fact that family responsibilities are

* Maria do Rosário Palma Ramalho is a Professor at the Faculty of Law at the University of Lisbon, and also presently holds the position of national expert for Portugal in the European Network of Legal Experts in the Field of Gender Equality.

¹ See in particular: A. Masselot, E. Caracciolo di Torella and S. Burri, European Network of Legal Experts in the Field of Gender Equality, *Fighting Discrimination on the Grounds of Pregnancy, Maternity and Parenthood. The application of EU and national law in practice in 33 European countries*, European Commission 2012, available at: http://ec.europa.eu/justice/gender-equality/files/your_rights/discrimination_pregnancy_maternity_parenthood_final_en.pdf; European Network of Legal Experts in the Field of Gender Equality, *Legal Approaches to Some Aspects of the Reconciliation of Work, Private and Family Life in Thirty European Countries*, European Commission 2008, available at: http://ec.europa.eu/justice/gender-equality/files/reconciliationfinal28aug2008_en.pdf; and E. Caracciolo di Torella & A. Masselot 'Work and Family Life Balance in EU Law and Policy 40 Years on: Still Balancing, Still struggling' in: European Network of Legal Experts in the Field of Gender Equality, *European Gender Equality Law Review 2/2013*, pp. 6-15, European Commission 2013, available at: http://ec.europa.eu/justice/gender-equality/files/law_reviews/egelr_2013_2_final_web_en.pdf. All webpages accessed 23 June 2014.

² Council Directive 96/34/EC of 3 June 1996 on the framework agreement on parental leave concluded by UNICE, CEEP and the ETUC OJ L 145 of 19 June 1996, pp. 4-9.

³ Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) OJ L 348 of 28 November 1992, pp. 1-8.

⁴ In this sense, see for example Recital 4 and Recital 8 of the Framework Agreement of the European Social Partners, which was adopted as Directive 96/34/CE, of 3 June 1996.

predominantly assumed by women and often this is a source of discriminatory practices against women in other areas, including professional life.⁵ This link explains the importance of measures aiming not only to facilitate the reconciliation of professional life *per se*, but especially of measures designed to promote a more balanced share of family responsibilities between working parents. Measures directed at fathers, such as paternity leave, and the non-transferable principle attached to parental leave, go in that direction. This being the case and taking into consideration the time that has elapsed since the approval of the first parental leave directive, the issue of the practical developments of this link between reconciliation provisions and gender equality at national level also needs to be addressed in this report.

III. This Summary has three parts. In the first part a brief overview of the EU legislative context in the area of reconciliation, including primary and secondary legislation, soft law and the case law of the Court of Justice of the European Union (CJEU), is presented. In the second part the more significant findings regarding this issue in national law are presented, based on the answers to the questionnaire (annexed to this report) provided by the 33 national experts of the Gender Equality Network. Finally some general conclusions will be drawn, which specifically try to deal with the two questions mentioned above.

The Report covers the 28 EU Member States, three associated countries (Iceland, Liechtenstein and Norway) and two candidate countries (the Former Yugoslav Republic of Macedonia – and Turkey). National reports follow the Executive Summary, in Part II of this Report.

2. The legislative context in European Union Law

The subject of reconciliation between professional, private and family life is developed in EU Law in primary legislation and in secondary legislation, including soft law provisions, and by the case law of the CJEU.

2.1. Primary and secondary legislation

I. At the primary law level, the right to reconciliation of professional and family life and the specific protections attached to that right are recognised by the Charter of Fundamental Rights of the EU (CFREU). Article 33(2) states that ‘to reconcile family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity, and the right to paid maternity leave and to parental leave following the birth or adoption of a child.’ This provision can be called upon for further development of reconciliation provisions, especially since the Lisbon Treaty and in view of the binding force recognised to the Charter by Article 6 No. 1 of the TEU.

Furthermore, given the close relation between the subject of reconciliation and the gender equality principle as indicated above, Article 23 of the CFREU, and Article 2 and Article 3 No. 3, paragraph 2 of the TEU, as well as Articles 8, 10, 153 No. 1 i) of the TFEU, as approved by the Lisbon Treaty, all referring to the gender equality principle, can also be called upon in relation to reconciliation issues. In particular the principle of equal pay for equal work or work of equal value for male and female workers (Article 157 TFEU) can also be at stake, whenever discriminatory treatment in pay is a consequence of the exercise of rights related to maternity, paternity or parenthood, but in general the prohibition of both direct and indirect discrimination on the grounds of sex as regards employment, promotion and professional training has to be taken into consideration as regards reconciliation issues⁶

⁵ For further developments on the link between reconciliation issues and the principle of gender equality, see M. R. Palma Ramalho ‘Reconciling Family and Professional Life and the Gender Equality Principle in Employment’, in: *European Gender Equality Law Review* 2/2009, pp. 7-14, European Commission 2009, available at: http://ec.europa.eu/justice/gender-equality/files/egelr_2009-2_en.pdf, accessed 25 June 2014.

⁶ For the specific connection between equal pay between men and women and reconciliation practices, see Recital 11 of Directive 2006/54/EC, of 5 July 2006, on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast).

II. At the secondary law level, the right to reconcile professional and family life and the protection attached to that right are granted primarily by two Directives.

The first is Pregnancy Directive 92/85/EEC, (now under revision) which is relevant during the period from the beginning of the pregnancy until the end of maternity leave (Article 1 No. 1). Aiming at protecting the health and safety of pregnant workers, this Directive also provides for specific forms of leave for pregnant workers and workers who have recently given birth or are breastfeeding, which allow for the reconciliation of work and family life at an early stage. However, given its formal basis on the provisions of the Treaties related to health and safety at the workplace (in this case, health and safety related to pregnancy, maternity and breastfeeding), this Directive is in principle applicable only to women,⁷ so the reconciliation between professional and family life that it allows for is necessarily limited to women.

The second directive dedicated to reconciliation issues was Directive 96/34/EC, of 3 June 1996, which gave legal effect to the Framework Agreement of the European social partners concluded on 14 December 1995. This Directive laid down minimum requirements designed to facilitate the reconciliation of parental and professional life both by men and women workers (Clause 1, Paragraph 1), by establishing the right to a parental leave of a minimum of three months (Clause 2, Paragraph 1), in principle non-transferable (Clause 2, Paragraph 2), but to be defined by national legislation (Clause 2, Paragraph 3). The Directive also granted the right to protection against dismissal during parental leave or for applying to it (Clause 4), the right to return to the same or to an equivalent job at the end of the leave (Clause 5), the right to maintain acquired rights during the leave (Clause 6) and the right to force majeure leave, for family reasons (Clause 3). Unlike the Pregnancy Directive, the Parental Leave Directive established reconciliation measures applicable to men and women, and expressly recognised the link between reconciliation practices and the principle of gender equality (Recitals 4 and 8 and Clause 2 Paragraph 2).

Directive 96/34/EC was replaced by Parental Leave Directive 2010/18/EU, of 8 March 2010, after a period of consultation of the European social partners in 2006 and 2007 on ways to further improve the reconciliation of work, private and family life and, in particular, the existing legislation on maternity and parental leave, and on the possibility to introduce new types of family-related leaves, such as paternity leave, adoption leave and leave to care for family members (Preamble 4). Directive 2010/18 puts into legal effect the revised Framework Agreement on parental leave concluded on 18 June 2009 by BUSINESSEUROPE, UEAPME and ETUC, which is annexed to the Directive and should have been transposed by 8 March 2012 (Articles 3(1) and 4).

III. Directive 2010/18 applies to all workers who have an employment contract, including part-time workers, fixed-term workers and temporary agency workers (Clause 1). It provides that Member States shall grant all employees a right, in principle non-transferable, to four months' unpaid parental leave which can be used until the child has reached the age of eight, although the precise age is to be determined by the Member States (Clause 2).

The two most important changes introduced by the 2010 amendments to the Framework Agreement are the extension of the minimum period that parents can take parental leave (from three to four months) and most of all the fact that, in order to encourage a more equal take-up of leave by both parents, at least one month shall be provided on a non-transferable basis. However, the modalities of application of the non-transferable period are left to the Member States (Clause 3). The Parental Leave Directive further provides protection from discrimination for workers on the grounds of applying for or taking of parental leave and stipulates that, at the end of the leave, workers have the right to return to the same job or, if that is not possible, to an equivalent or similar job consistent with their employment contract or employment relationship (Clause 5). Workers also have the right to request changes to their

⁷ Despite this fact, the CJEU has already recognised that the protection of parental rights is also aimed at promoting the relationship between a father and his child – Case C-104/09 *Roca Álvarez v. Sesa Start España ETT-SA* [2010] ECR I-8661.

working hours for a limited period; in considering such requests, employers must balance the needs of the workers and of the company (Clause 6). The Directive also provides a right to leave on grounds of *force majeure* for urgent family reasons (Clause 7). Finally the Directive also grants these rights in the case of adoption, and specific needs of adoptive parents should be addressed by specific measures at national level, when necessary (Clause 4).

In addition to specific rights related to parental leave, gender equality legislation might also apply, due to the relationship between the two topics indicated above. Requirements based on working-time periods, mobility or flexibility might for example amount to indirect sex discrimination related to parental leave or another type of leave. This being the case, the sex-equality directives may be called upon; especially relevant is Recast Directive 2006/54, namely as regards Article 21 (2), which explicitly links the topic of gender equality with reconciliation issues regarding flexible working time arrangements.

2.2. Soft law and policies of the European Union as regards the reconciliation of professional and family life

The link between reconciliation practices and gender equality was also stressed by Council Resolution No. 9303/00, of 19 June 2000,⁸ regarding the promotion of balanced participation of men and women in professional activity and in family activities. This Resolution stated that a balanced participation of women and men both in the labour market and in family life is an essential aspect of the development of society, and that maternity and paternity rights as well as the rights of children are current social values to be protected by society, the Member States and the European Union.

This commitment was renewed on several other occasions, such as in the Presidency Conclusions of 23/24 March 2006,⁹ which acknowledged the need to promote a better work-life balance and to combat gender stereotypes in the employment market. A similar statement was made in the 2008 Work-Life Balance Package, which includes a Communication from the European Commission¹⁰ dealing with this issue and establishing the grounds for a proposal on paternity leave, to be integrated into the revision of the Pregnancy Directive. Despite the subsequent dropping of this proposal, because of the present economic difficulties across Europe,¹¹ these developments show that the issue of reconciliation and, more specifically, the need to promote a balanced reconciliation of work and family life between men and women is an important subject at EU level.

2.3. Case law of the Court of Justice of the European Union

The Parental Leave Directive has been interpreted by the CJEU mainly as regards the following subjects: the extension of parental leave in the case of multiple childbirth; the relationship between parental leave and maternity leave, regarding the right to an earlier return from parental leave when the mother on leave becomes pregnant again; the calculation of compensation for dismissal occurring during part-time parental leave; the right to annual leave in relation to part-time parental leave; surrogacy and parental rights; the right to return to the same post at the end of the leave; and possible discrimination of the worker in cases of dismissal on objective grounds, due to the taking of parental leave.

⁸ OJ C 218 of 31 July 2000.

⁹ Presidency Conclusions of 23/24 March 2006, 777751/1/06 REV 1.

¹⁰ *Communication from the Commission 'A Better Work-Life Balance: Stronger Support for Reconciling Professional, Private and Family Life'*, COM(2008) 635.

¹¹ *Commission Improves Work-Life Balance for Millions with Longer and Better Maternity Leave Brussels, 3 October 2008, IP/08/1450*, available at: <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/08/1450&format=HTML&aged>, (as of 10 June 2012), accessed 25 June 2014. See also Consultation Document SEC (2006) 1245 and SEC (2008) 571 as discussed in the *Communication from the Commission 'A Better Work-Life Balance: Stronger Support for Reconciling Professional, Private and Family Life'* COM (2008) 635, and *European Commission, Employment, Social Affairs and Equal Opportunities 'Opinion on New Forms of Leave (Paternity Leave, Adoption Leave and Filial Leave)' 2008*.

In the *Zoi Chatzi* case, the Court was asked whether Directive 96/34/EC, interpreted in conjunction with Article 24 of the CFREU, can be regarded as creating a right to parental leave for each child, alongside the right of the parents to the leave, in a case where twins are born.¹² The Court considered that the Directive does not award a personal right of parental leave to the child and that the provisions of the Directive do not mean that the birth of twins establishes a right to a number of parental leave periods equal to the number of children born. The Court clarified that in the light of the principle of equal treatment, the Directive imposes on the national legislators the obligation to establish a parental leave system where, depending on the situation in the relevant Member State, it ensures the parents of twins a treatment that takes into account their special needs as appropriate and in line with EU law.

As regards an early return from parental leave and subsequent maternity leave, in the *Kiiski* case,¹³ the Court has held that an employee who had been granted parental leave, and then discovered that she was pregnant and due to give birth part-way through her parental leave, should be allowed to end her parental leave early and return to work in order to benefit from paid maternity leave. Similarly, in the *Busch* case,¹⁴ the Court examined the case of a nurse wishing to return to work before the end of a period of parental leave. In order to do so, she informed her employer that she was pregnant again. Although her new pregnancy was likely to prevent her from carrying out all of her normal duties, the Court held that the employer was not allowed to prevent her from returning early. Maternity leave was also discussed in the joined cases *Työtuomioistuin Liitto*.¹⁵ Here, the Court ruled that Directive 96/34/EC must be interpreted as precluding a provision of national law, pursuant to which a pregnant worker who interrupts a period of unpaid parental leave (within the meaning of that Directive) to take a maternity leave (within the meaning of Directive 92/85/EC) with immediate effect, does not benefit from the maintenance of the remuneration. This remuneration is that to which she would have been entitled had she resumed work for the minimum period required, prior to the maternity leave period.

In the *Meerts* case,¹⁶ as in the *Rogier* case,¹⁷ the Court discussed the question of how to calculate the compensation for dismissal of a worker on part-time parental leave, and established that, given the fact that the worker was employed on a full-time basis, prior to the leave, the calculation of the compensation should be made on the basis of the full-time salary.

As regards the right to annual leave in relation to part-time parental leave, the Court confirmed in the *Zentralbetriebsrat der Landeskrankenhäuser Tirols v. Land Tirol* case that the *pro rata* principle should be applied when calculating the period of annual leave, as regards the period of parental leave, when taken in the part-time model, but that the right to annual leave acquired prior to the leave, on the basis of full-time work, should be respected.¹⁸

Regarding surrogacy – a subject that also falls under the scope of this report – the Court has very recently issued a ruling concerning the right to maternity leave of the commissioning mother, whom has given birth under a surrogacy agreement.¹⁹ In this case, the Court was asked if the commissioning mother that has given birth under a surrogacy agreement has the right to maternity leave under EU law, in particular Directive 92/85/EEC, since in national legislation (in the case, the United Kingdom) there are no specific rules on maternity leave for

¹² Case C-149/10 *Zoi Chatzi v Ypourgos Oikonomikon* [2010] ECR I-8489.

¹³ Case C-116/06 *Sari Kiiski v Tampereen Kaupunki* [2007] ECR I-7643.

¹⁴ Case C-320/01 *Wiebke Busch v Klinikum Neustadt GmbH & Co. Betriebs-KG* [2003] ECR I-2041.

¹⁵ Joined Cases C-512/11 and C-513/11 of 13 February 2014 (*Työtuomioistuin Liitto*) – Reference for a preliminary ruling (Finland) Terveys- ja sosiaalialan neuvottelujärjestö TSN ry v Terveyspalvelualan Liitto ry (C-512/11) and Ylemmät Toimihenkilöt YTN ry v Teknologiateollisuus ry and Nokia Siemens Networks Oy (C-513/11), http://curia.europa.eu/juris/document/document_print.jsf?jsessionid=9ea7d2dc30dc297bfe334e9848e9a45e836b250ef79d.e34KaxiLc3qMb40Rch0SaxuMbNn0?doclang=EN&text=&pageIndex=0&part=1&mode=DOC&docid=147841&occ=first&dir=&cid=259246.

¹⁶ Case C-116/08, *Christel Meerts v Proost NV* [2009] ECR I-10063.

¹⁷ Case C-588/12 of 27 February 2014 – Reference for a preliminary ruling (Belgium) *Lyreco Belgium NV v Sophie Rogiers*, <http://curia.europa.eu/juris/celex.jsf?celex=62012CJ0588&lang1=en&type=TXT&ancre=>

¹⁸ Case C-486/08, *Zentralbetriebsrat der Landeskrankenhäuser Tirols v. Land Tirol* [2010] ECR I-3527.

¹⁹ Case C-167/12 of 18 March 2014 – Reference for a preliminary ruling (United Kingdom) C.D. v S.T., <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2012:194:0009:0010:EN:PDF>.

intended mothers. The Court decided that Directive 92/85/EC must be interpreted to mean that Member States are *not* required to provide maternity leave pursuant to Article 8 of that Directive to a female worker, who as a commissioning mother has had a baby through a surrogacy arrangement. This will be the interpretation even in circumstances where the commissioning mother may breastfeed the baby following the birth. Article 14 of Directive 2006/54/EC, read in conjunction with Article 2(1)(a) and (b), and Article (2)(c) of Directive 92/85/EC, must be interpreted as meaning that an employer's refusal to provide maternity leave to a commissioning mother who has had a baby through a surrogacy arrangement does not constitute discrimination on grounds of sex. Although this case is directly related to maternity leave and not with parental leave, it is important to take it into consideration, because questions related to surrogacy and parental rights may arise.

The Court has also ruled on the right to return to the same post at the end of parental leave, and on a possible discrimination against a worker in a case concerning dismissal on objective grounds due to the taking of parental leave. In the case of *Riežniece*,²⁰ the Court examined a situation where a worker who has taken parental leave is assessed in his or her absence on the basis of assessment principles and criteria which place him or her in a less favourable position, compared to those workers who did not take parental leave. This was specifically in the context of the abolishment of officials' posts due to national economic difficulties. The Court decided that it is up to the national court to ensure that the assessment encompasses all workers likely to be concerned by the abolishment of the post; that it is based on criteria which are absolutely identical to those that apply to workers in active service; and that the implementation of those criteria does not involve the physical presence of workers on parental leave.

3. Summary of the findings²¹

3.1. Context

I. Parental leave being one of several types of leave and other measures intended to facilitate the reconciliation of professional, private and family life, a general picture of the national legislation aiming to protect maternity, paternity and parenthood is essential to understand the perspective of Member States on this particular leave and how the several different periods of leave and other reconciliation measures are combined.

National reports show that, in time, all countries have developed rather complex systems designed to protect pregnancy and maternity and to promote the reconciliation of professional and family life. All countries provide for several types of leave aimed at facilitating reconciliation, which may include pregnancy, maternity, paternity, parental, adoption, childcare and other care leave. The right to time-off from work for family reasons and to special working-time arrangements, such as part-time work, are also established.²²

II. However, the combination of these types of leave and even the identification of each leave differs substantively from jurisdiction to jurisdiction, making it very difficult to obtain a clear picture of the subject.

In some countries, the distinction between the types of leave (pregnancy and maternity leaves, paternity leave, parental leave, adoption leave, childcare leave and other care leaves) is clearly established and all these types of leave are put in place separately. However, in other

²⁰ Case C-7/12 (*Riežniece*) of 20 June 2013 – Reference for a preliminary ruling (Latvia), Nadežda Riežniece v Latvijas Republikas Zemkopības ministrija (Ministry of Agriculture), Lauku atbalsta dienests (Rural Support Service), <http://curia.europa.eu/juris/celex.jsf?celex=62012CJ0007&lang1=en&type=TEXT&ancre>.

²¹ As regards this part of the Executive Summary, the references to the countries are to be considered as examples and more information is available in the national reports and tables.

²² See for further information: European Network of Legal Experts in the Field of Gender Equality, S. Burri and H. Aune *Sex Discrimination in Relation to Part-Time and Fixed-Term Work: The application of EU and national law in practice in 33 European countries*, European Commission 2013, available at: http://ec.europa.eu/justice/gender-equality/files/your_rights/sex_discrimination_in_relation_to_part_time_and_fixed_term_final_en.pdf, accessed 25 June 2014.

countries only some of these types of leave are established. In a third group of countries, *parental* leave is presented as a comprehensive leave, incorporating most of the other leaves and in some cases even including maternity leave (this is the case of **Norway**, for example), and thus giving parental leave a much broader scope at the national level than at EU level. In other countries, *maternity* leave is the general pattern for the types of leave that aim to facilitate the reconciliation of work and family life (including parental leave, for example, as happens in **Slovakia**), although the transfer of maternity rights to the father is also possible.

It is also worth mentioning that the identification of the types of leave varies greatly between countries and often does not coincide with the EU law understanding of the corresponding leave. For instance, this is the case for **Slovakia**. However, this maternity leave includes the EU notion of parental leave, since it goes beyond the concept and duration of maternity leave prescribed by Directive 92/85, as the leave is directly related to pregnancy and childbirth. On the contrary, in **Norway**, the main concept is ‘parental leave’, and this leave integrates maternity leave, in the sense of Directive 92/85. In **Portugal**, several successive types of leave concerning childbirth and care of young children are called ‘parental leave’ (including maternity leave) but some other types of leave, also dedicated to the care of children and corresponding to a parental leave in the sense of the Directive, have another name. Differently in **Turkey** the very concept of ‘parental leave’ seems to be absent, but several types of leave have been established for the purposes of care under the term ‘maternity leave’ and ‘excuse leave’.

This variety of concepts between countries and sometimes even in the relevant country – causing some experts to classify the legal system of their country as complex or confusing (the opinion of national experts from **Belgium** and **Greece**) – does not facilitate a general analysis of the national developments in this area, let alone of the specific role of parental leave in the context of other leaves and working-time arrangements designed to facilitate the reconciliation between work and family life.

Specifically as regards the relationship between maternity and parental leave, the situation is not the same in the different countries. In most countries, parental leave immediately follows maternity leave, but in some at least part of the leave can be postponed until later, until the child reaches a certain age. According to this successive use of the two types of leave, the duration of each one of them may depend upon the duration of the other leave, but no problems of compliance with Directive 92/85 were indicated by the experts.

Also, in countries where the distinction between maternity and parental leave seems clearer, there may be not only one but several types of parental leave, according to the age of the child, the number of children or the specific needs of handicapped children or children who are seriously ill. These leaves can be taken up successively, and at a certain point the distinction between parental leave and other leaves for the purposes of childcare and other care needs becomes unclear.

As regards the types of leave aiming at the reconciliation of work and family life, paternity leave also has to be considered, since many countries establish a specific leave for the father by the time of the birth of the child (usually in the first month following the birth), which is a separate leave, apart from maternity and parental leave.

Finally as regards adoption leave, some countries have established a specific adoption leave, while others consider adoption leave as a form of maternity leave or as a form of parental leave, or simply apply the provisions on maternity leave or on parental leave to adoptive or foster parents, with minor adaptations.

As to the modalities of the application of parental leave, the situation is also very different from one country to another. While in some countries full-time parental leave is the normal pattern, in others it is up to the worker to choose to take the leave on a full-time or on a part-time basis and in a third category the normal pattern of the leave is part time.

As regards the individualisation of the right to take the leave, almost all countries have established the non-transferable principle of at least part of parental leave, but in some of them the leave cannot be taken simultaneously by both parents.

Finally, the relationship between the granting of parental leave and the payment of the leave or the social security allowance attached seems to be very important, since in some countries parental leave is unpaid, while in others it is paid only for a certain period and these differences are identified by the experts as a justification for the practical take-up of the leave or for its effective duration.

In addition to these types of leave, most countries allow for time-off from work for urgent family reasons, not only related to breastfeeding or to the care of small children but also related to the care of older children or of other relatives. Many have established time limits and other conditions for these absences, however, according to different criteria. Also, part-time or reduced working hours when returning from parental leave are granted by most countries for reasons related to care, with certain conditions and time limits.

3.2. Implementation of Directive 2010/18

I. As regards the implementation of Directive 2010/18, many countries have not proceeded to formally implement the Directive, because they considered that national legislation already complied with EU law (**Austria, Czech Republic, Finland, Germany, Iceland, Latvia, Lithuania, Portugal, Spain, and Sweden**). In addition, the experts for the EEA countries of **Iceland, Liechtenstein, and Norway** indicate that national law is in accordance with EU law.

In other countries, formal transposition of the Directive was ensured (**Bulgaria, Cyprus, Estonia, Greece, Hungary, Ireland, Liechtenstein, Slovakia, and Slovenia**). In a third category of countries, as a result of the Directive, national legislation was submitted to small amendments on specific points, such as the minimum duration of parental leave (**Belgium, Croatia, Luxembourg, Malta, Romania and United Kingdom**), the right to adapt working conditions when returning from the leave (**Denmark, Italy, Luxembourg, Netherlands**), the non-transfer clause in parental leave (**France**, but only in relation to the public sector), or the provisions on childcare leave (**Poland**).

Finally, in other countries the Directive was considered as an opportunity to improve national legislation or to introduce only formal changes, even though no transposition was considered necessary (**Finland and Norway**). Some countries indicated that new changes are being prepared (**Ireland**).

II. In countries where formal transposition of the Directive has taken place (either in a more general way, or on specific issues), implementation has been accomplished by statutory law. However, some experts mention that the necessary updating of collective agreements has yet to take place (e.g. **Slovakia**; and **Belgium**, where social partners do not seem interested).

As regards the drawing up and publication of tables to illustrate the correlation between the Directive and transposition measures (Preamble 16), only **the Netherlands, Poland, and Slovakia** mention the preparation and publication of such tables, while the **Czech Republic** expert reports that these tables exist but are not public. In **Greece**, under each Article of the transposing legislation the corresponding provisions of the Directive are mentioned.

3.3. Purpose and scope (Clause 1)

I. Clause 1 of the Framework Agreement states that the minimum standards established in the Agreement in order to facilitate the reconciliation of work and family life shall be applicable to all workers with an employment contract or an employment relationship, as defined at national level, including fixed-term contracts, part-time contracts and employment relationships with a temporary agency.

II. According to national experts, national legislation regarding parental leave is in general applicable both to the public and the private sectors, although not always in the same way.

In the majority of countries, the provisions on parental leave are directly applicable to both sectors, while in a few countries each sector is formally governed by its own rules, but these rules are similar (**Belgium**). However, in some countries, the experts mention that the

provisions applicable to public workers are more favourable than those applicable in the private sector, either in general or regarding specific issues (**Greece, Malta, Netherlands, Spain and Turkey**). In other countries, even in the private sector, there are professions with specific provisions (e.g. sailors in **Greece**).

III. In all countries, the scope of the legislation on parental leave includes contracts of employment or employment relationships related to part-time workers, fixed-term contract workers or persons with a contract of employment or employment relationship with a temporary agency.

Still, in some countries some gaps are mentioned as regards these categories of workers in the public sector (**Belgium, Greece**), while in other countries, the experts mention that access to parental leave or to the social security benefits attached to the leave depends upon a minimum duration of the employment contract. This requirement²³ mostly affects fixed-term workers (**France, Liechtenstein or Malta**). Finally, in **Hungary**, some fixed-term workers have no access to parental leave, because they have a ‘simplified employment relationship’, which is a very short-term employment contract for seasonal activity in agriculture and tourism. Finally, in **Hungary**, fixed-term workers employed in ‘simplified employment relationships’ (very short-term employment contracts for seasonal activity in agriculture and tourism) and ‘executive employees’ (covering a far wider circle of employees than the CEO and its deputies) are not granted parental leave, which the expert considers to be an important gap in national law.

From another perspective, some experts mention that national legislation extends the protection regarding parents to self-employed persons (for instance **Iceland, Latvia**), or to apprentices and specific categories of partners (**Italy**).

3.4. Parental leave (Clause 2)

I. Clause 2 of the Framework Agreement establishes an individual right to parental leave to take care of a natural or adopted child until a she/he reaches a certain age that can go up to the age of eight but is to be defined by national legislation (Clause 2, Paragraph 1). This leave has a minimum duration of four months and is in principle non-transferable, but at least one month cannot be transferred. However, the modalities of application of the non-transferable periods are to be determined at national level, taking into account national provisions regarding leave (Clause 2, paragraph 2).

The implementation of this provision at national level raises the following issues: the relationship between this leave and other family-related leaves, established at EU level and at national level; the duration of parental leave; the age limits of the child for the purpose of the parent applying for the leave; and the individualisation of the right to the leave with the related issue of how to address the non-transferability requirement.

The questions related to the implementation of this provision at national level, as regards adoption, will be addressed separately.

Before going into these questions a prior point should be established. It becomes evident on reading the national reports that, as regards parental leave, in the sense of Clause 2 of Directive 2010/18 (e.g. a leave different from maternity leave granted to both parents and designed to take care of a child under eight), the provisions at national level are indeed very different. This is a result of the approaches of the countries to the notion and extension of parental leave, and to the relationship between parental leave and other leaves related to maternity, paternity and care, as indicated above.²⁴ These different approaches result in different provisions as regards the minimum and the maximum duration of parental leave, the

²³ Such a requirement is in compliance with the Directive if the entitlement to parental leave is subject to a period of work qualification and/or length of service qualification, which does not exceed one year (Clause 3(b)).

²⁴ Section 3.2.

maximum age of the child for the purposes of parental leave, and other aspects of the provisions related to parental leave.

II. The setting of the minimum duration of parental leave at four months, as requested by Directive 2010/18, seems not to have been a problem at the national level.

In fact, only a few countries had to change the minimum duration of the leave in order to establish four months as a minimum duration, as a result of Directive 2010/18 (**Belgium, Greece** (private sector), **Ireland, Croatia, Liechtenstein, Luxembourg, Malta** and **United Kingdom**), since in most countries the minimum duration of the leave was already in compliance with the duration of the leave stipulated in Directive 2010/18. In some countries however, it is worth mentioning that compliance by national legislation with EU law results from the fact that there are several modalities of parental leave or childcare leave that can be taken successively and that, when considered together, far exceed the minimum duration of parental leave, as set in the Directive (**Portugal**).

III. As regards the maximum duration of the leave, the situation also varies considerably, particularly because in some countries parental leave and maternity leave are somewhat integrated; and also due to most countries having not one but several types of parental leave and childcare leave, according to the age of the child, the number of children or the specific needs of handicapped children or children who are seriously ill, with all these leaves being allowed to be taken up successively. In both these cases, the maximum duration of the leave indicated by the experts can be related to this wider notion of parental leave. Also, the maximum duration of the leave may depend on the modalities of application (full-time or part-time).

In the first group of countries, parental leave immediately follows maternity leave and can go up to a certain age of the child (two or three years, or more for a handicapped child or child that is seriously ill) – this group e.g. includes **Finland, Germany, Portugal, Slovakia, Estonia, France, Hungary, Lithuania, Romania or Spain** (until the child reaches the age of three). This being the case, the duration of parental leave is in close relation and indeed depends upon the duration of maternity leave or sometimes integrates maternity leave. Also, in some of these countries the maximum duration of the leave is the sum of several periods, which can be renewed until this maximum duration (or a certain age of the child) is reached (in **France**, where the leave is taken in successive periods of one year, until the child is three years old; or in **Portugal**, where childcare leave is taken in successive periods of six months until the child reaches the age of two).

In other countries, parental leave can also be taken after maternity leave but its maximum duration is set at a fixed period. In some of these countries, the maximum limits of parental leave surpass one year (480 days (with statutory benefit) in **Sweden** (the number of days can even be higher)), and 36 months in **Poland**), while in other countries the maximum time of the leave is less than one year (for instance eight months in **Croatia**, ten months in **Italy**, 32 weeks in **Denmark**, 26 weeks in **Finland** and in **the Netherlands**, or 260 days in **Slovenia**). Also as regards this group of countries, these limits correspond to the maximum duration of the leave, in the sense that they can be taken in successive periods.

In the third group of countries, the time limits of parental leave stay close to the four months defined by the Directive as the minimum duration of the leave (**Ireland, Malta** or **United Kingdom**, with eighteen weeks, **Belgium, Greece** (private sector), **Liechtenstein, Luxembourg** and **Malta** with four months), but this limit is higher if the leave is taken on the modality of part-time (for instance **Belgium, Luxembourg** or **Portugal**) or can be enlarged by collective agreements (for instance in **Greece**).

Finally, as regards the maximum duration of the leave, it is worth mentioning that many countries provide for longer periods of parental leave in specific situations, like the birth of more than one child (**Croatia, Greece** (public sector) or **Norway**), for the third and subsequent children (**Croatia**), for widows or single parents (**Cyprus, Greece**), or if the child is handicapped or severely ill (**Greece, Poland, Portugal, Slovakia**). As to possible differences between the duration of the leave in the private and in the public sector, only the

expert from **Greece** described how in the private sector the duration of the leave is fixed at four months, while in the public sector it is nine months, excluding fixed-term employees.

Also to be noted as a significant measure to promote gender equality in reconciliation issues, in some countries, is that the duration of parental leave is longer when a certain period is taken by the father of the child (for instance, this is the case in **Italy**, where the duration of the leave is ten months but can increase to eleven months if part of the leave is taken by the father).

In addition to the minimum and maximum duration of the leave, an important factor to take into consideration as regards the effective length of parental leave concerns the payment of the leave or the social security benefits attached to it. In fact, in several countries the maximum duration of the leave established by the law is longer than the period during which the parent has the right to apply for the social security benefits attached to the leave (this is the case in **Bulgaria**, where the leave can be taken until the child reaches the age of eight but it is only paid until the child reaches the age of two; in **Denmark**, each parent and both parents have the right to 32 weeks of leave but the social security benefits are paid only for one period of 32 weeks; in the **Former Yugoslav Republic of Macedonia**, the paid leave of nine months and the unpaid leave of three months can be taken until the child reaches the age of three; in **Norway**, the payment of the leave is calculated on the basis of 100 % or of 80 % of the salary, according to the choice of the worker between a shorter or a longer period of leave, from 49 to 59 weeks). In short, whenever a certain period of the leave gives a right to a specific social security benefits, all experts agree that the leave is normally taken only during that period.

IV. It is also worth mentioning that, aside from parental leave, many countries establish the right to paternity leave as a specific right of the father of a new-born child, to be taken during the first weeks or months of the child's life.

The duration of this paternity leave varies from two days (**Luxembourg, Netherlands**), to two weeks (**Bulgaria, Denmark, Norway, Poland, UK**) or twenty days (**Portugal**, in two periods of ten days). At least in one country this leave is mandatory for part of the time, and the national expert considers that this compulsory force of the legal provision is intended as a positive action to promote the role of fathers in the care of young children (**Portugal**).

V. As to the maximum age of the child in relation to parental leave, the situation differs according to the countries' perspective on the relationship between maternity leave and parental leave.

In those countries where parental leave is conceived as the leave that immediately follows maternity leave, the maximum age of the child tends to be lower – two, three, four or five years (**Austria, Bulgaria, Czech Republic, Estonia, France, Former Yugoslav Republic of Macedonia, Germany, Hungary, Liechtenstein, Lithuania, Luxembourg, Norway, Spain, Sweden, or the United Kingdom**²⁵). Nevertheless, since in some of these countries it is also possible to postpone part of the leave to a later stage, with higher age limits fixed for the child for the purpose of enjoying this postponed period (**Austria, Bulgaria, Denmark, Germany or Sweden**, for example).

On the other hand, in countries where the link between parental leave and maternity leave is not so close, the age limit of the child for the purposes of parental leave is in general fixed at eight (**Bulgaria, Croatia, Cyprus, Denmark, Iceland, Ireland, Italy, Latvia, Malta, the Netherlands or Slovenia**) but it is higher in some countries (**Belgium**, with twelve, for example).

One interesting finding is that, for a disabled child or a child with a long-term illness, several countries extend the age limit of the child for taking parental leave or childcare leave (**Belgium, Cyprus, France, Greece, Hungary, Ireland, Poland, Portugal, Slovakia, and the United Kingdom**).

²⁵ However, in the UK the maximum age will be raised to 18 in April 2015.

VI. As regards the individualisation of the right to parental leave, most countries conceive parental leave as a specific right of each parent. Only in the **Former Yugoslav Republic of Macedonia** is the right to parental leave conceived as a right of the mother (the father can use it only if the mother does not) while in **Liechtenstein** the issue seems not to have been decided. However, as emphasised by the expert from **Greece**, the recognition of the individual right to parental leave of each parent may be only formal if the provisions applicable to each leave are different. This happens in the public sector in **Greece**, where the right to leave of both parents is recognised but it is wholly transferable, so that if only one of them makes use of the whole period of the leave, there is no leave left for the other.

It is also important to note that the recognition of the right to parental leave to each parent and both parents does not always mean the same thing at national level. On the one hand, the total duration of the leave seems to be granted to each parent individually in some countries, while in other countries the duration of the leave is stated as such and it is up to the parents to divide the period of the leave between them. On the other hand, some countries allow the leave or part of the leave to be taken by both parents simultaneously (e.g. **Czech Republic, France, Spain, and Austria** but only as regards one month of the leave), while other countries allow for the parents to enjoy alternating periods of the leave (e.g. **Estonia, Italy, Norway and Poland**).

One interesting finding is that the right to parental leave of the person who effectively takes care of the child is also recognised in some countries on certain conditions, apart from the parents (and instead of the parents). For example, in **Estonia** and in **Lithuania**, parental leave can be taken by the actual person who takes care of the child if the parents are not present, and in **Portugal**, there is a leave of 30 days for a grandparent to take care of the child of an adolescent daughter still living with her parents.

VII. Close to the topic of the individualisation of the right to parental leave is the possibility to transfer that right to the other parent. In the revision of the Framework Agreement the general principle of non-transferability of the leave was complemented by a binding provision stating that at least one month of parental leave cannot be transferred to the other parent, in order to promote gender equality in the taking of the leave (Clause 2 No. 2).

As regards this topic, some countries have established a general principle of transferability of the right to the leave of the other parent, except for a certain period, which may coincide with the non-transferability rule of one month indicated in the Directive (**Bulgaria, Ireland, Poland or Romania**) or correspond to longer periods (e.g. 60 days in **Sweden**, six weeks in **Finland**, ten weeks in **Norway**, whose national expert expressly refers to this period of the leave as the ‘women’s’ and the ‘men’s’ ‘quotas’).

In contrast, in other countries the general principle is the non-transferability of the right to the leave (**Belgium, France, Germany, Greece** (private sector), **Iceland, Latvia, Luxembourg, Malta, the Netherlands, Portugal, Slovakia, Spain and the United Kingdom**). However, some of these countries allow for the transfer of part of the leave (e.g., **Cyprus**, allowing for the transfer of two weeks, or **Italy**, allowing for the transfer of three months). Only in **Austria, Czech Republic, Denmark, Estonia, Greece** (public sector), the **Former Yugoslav Republic of Macedonia, Liechtenstein** and **Lithuania** is the entire period of the leave transferable,²⁶ while in **Slovenia** the newly adopted law has established a non-transferable period of one month. In **Hungary**, both parents are entitled to the parental leave until the child reaches the age of three.

VIII. As to the question of parental leave in the case of surrogacy, almost all experts report that surrogacy is not addressed in their countries while some of them indicate that this practice is illegal or even a criminal offence under national law (**Belgium** (if it has a commercial purpose), **Estonia, France, Liechtenstein, Norway and Portugal**).

As to the consequences of childbirth by surrogacy, in relation to parental leave, some experts consider that under national law, the woman who gives birth to the child is considered

²⁶ Meaning that in these countries there is no specific obligation to make one month non-transferable.

as the mother for all purposes and therefore would be entitled to all maternity-related leaves, including parental leave (**Latvia** or **Portugal**).²⁷ Other experts say that the right to parental leave could be recognised to the person who keeps the child, if the child is considered an adoptive child. In this case, parental leave or adoption leave (when established as an autonomous leave) could be available for these parents (**Croatia, Finland, the Netherlands, Slovakia, Sweden** or **the United Kingdom**). In **Greece**, in the private sector, parents who obtain a child by surrogacy are entitled to the same parental leave as natural parents.

Despite the lack of regulation in most countries, there seems to be some public discussion and case law on this issue (**Austria** and **Norway**). The expert from **Norway** describes a situation where surrogacy took place in a foreign country and the Norwegian commissioning mother was not allowed to bring the child into Norway for two years. Other cases have been about couples where one of the ‘parents’ is biologically related to the child. According to the expert, in these situations only the biological parent will be granted paid parental leave, while the non-biological parent will first have to adopt the child and then rights to parental leave may be established.

3.5. Modalities of application (Clause 3)

I. According to Clause 3 of the Framework Agreement, the Member States can establish the modalities of application of parental leave, as regards the form of the leave (full-time, part-time or credit system) and the conditions to have access to the leave (including minimum duration of the employment contract and a notice period). Also, it is possible for the Member States to establish provisions intended to accommodate the workers’ right to the leave and the interests and needs of the employer that may justify the refusal or postponement of the leave, as well as specific conditions applicable to small firms and specific provisions aimed at special needs of parents of disabled children or children who are seriously ill. Most Member States make wide use of these provisions.

II. As regards the modalities of application of parental leave (apart from **Hungary**, whose expert reports that the issue is not addressed by law), all countries seem to address the issue, although from different perspectives.

In some countries the leave is conceived as a full-time leave (**Austria, Cyprus, Estonia, Ireland, Italy, Latvia** (but not always), **Lithuania, Luxembourg, Norway, Romania, Slovakia**, or **the United Kingdom**). Nonetheless, in some of these countries part-time arrangements, or combined systems are also allowed, depending upon the agreement of the employer (**Cyprus, Ireland, Luxembourg, Sweden** or **the United Kingdom**). An interesting provision regarding this issue is also the possibility of establishing part-time parental leave by way of collective agreements (**Italy** or **Malta**).

In other countries, it is up to the worker to choose between part-time or full-time leave, (**Belgium, Bulgaria, Denmark, Finland, France, Germany, Greece** – but not for all categories of workers – **Spain** – but only with the agreement of the employer, or if established as a right through collective agreement). Some experts also indicate that the original arrangement can be changed during the period of the leave (for instance, in **Belgium**). In other countries, the modality of parental leave depends on the type of parental leave at stake and also reflects the duration of the leave (e.g. in **Portugal** parental leave taken after maternity leave lasts for three months if taken full time but can last up to one year if taken on a part-time basis, but the childcare leave that may follow this first parental leave can only be taken on a full-time basis). Finally, in **the Netherlands**, part-time parental leave is a right of the worker while the full-time alternative requires the agreement of the employer. Also, in many countries it is possible to divide the leave into more than one period according to the worker’s choice (for example, **Austria, Finland, Germany, Greece** or **Iceland**).

²⁷ On this issue, see however the judgment of the CJEU in Case C-167/12 of 18 March 2014, regarding the right to maternity leave of the commissioned mother in case of surrogacy, mentioned above in Section 2.3 of this Executive Summary.

In contrast, in a few countries, the parent has the right to the leave, but the modality of application of leave must always be agreed between the worker and the employer (**Liechtenstein** or **Malta**). However, as regards this issue, an interesting provision was adopted in **Slovenia**, as reported by the national expert: if the parties do not reach agreement on the modality of the leave, the dispute will be decided by a public authority.

III. As to the establishment of specific requirements to have access to parental leave, two requirements are to be considered: notice periods prior to the taking of the leave; and the seniority of the worker as a condition to have access to the leave.

The great majority of the countries have established a notice period of variable length as a formal condition to have access to parental leave or other childcare-related leave (from ten days in countries like **Bulgaria** to three months for the public sector in **Malta** or **Liechtenstein** and four months in **Austria**). **Czech Republic, Greece, Latvia, Romania** and **Slovakia** seem to be the exception, as the experts indicate that no notice period is required.

In some countries the notice period differs according to the time of leave required (for instance, **Finland** and **Norway** establish shorter notice periods for short periods of leave), according to the economic sector in question (for instance in **France** and **Malta**, the notice period in the public sector is longer than in the private sector, while in **Belgium** there is a notice period for the private sector but not for the public sector) or according to the duration of the employment contract (**Liechtenstein**). In other countries the law does not establish notice periods, but such periods can be established in collective agreements (as in the case of some parental leaves in **Spain**).

Finally, in the third group of countries collective agreements can also establish a different notice period than the one established by the law (**Italy** or **the United Kingdom**).

As to seniority, the situation in the countries is different.

Some countries do not require any specific period of work or of previous employment for the worker as a material condition to have access to parental leave (e.g. **Austria, Belgium** (public sector), **Bulgaria, Germany, Greece** (public sector), **Hungary, Latvia, Lithuania, Spain** or **Sweden**).

In contrast, in other countries parental leave is only granted on the condition of a certain seniority of the worker that may be fixed at six months (for instance, **Cyprus, Former Yugoslav Republic of Macedonia, Norway, Poland**) or, as in most cases, at one year (e.g. **France, Belgium** (private sector), **Greece** (private sector), **Ireland, Liechtenstein, Luxembourg** (for the paid leave), **the Netherlands** or **the United Kingdom**). When this happens, the experts mention that in case of successive fixed-term contracts, the sum of the contracts is taken into account for the purpose of fulfilling the seniority requirement. Also, in some countries the duration of the employment contract required to have access to the leave can be reduced by collective agreements (**Malta**). In **Greece**, one year of employment with same employer is also required between leaves for consecutive children (private sector).

In the third group of countries, the situation is slightly different. Although the right to parental leave is not conditioned on the seniority of the worker, access to the social security benefits attached to the leave depends upon the length of time during which contributions have been made to the social security system (e.g. **Croatia, Denmark, Finland, Iceland, Portugal** or **Romania**). If this condition is not fulfilled, the worker is entitled to the leave but not to the attached social benefits (but this does not apply to **Romania**).

IV. Another issue related to parental leave is how to balance the right and the modalities of parental leave with the interests and needs of the employer that may justify the refusal or postponement of the leave, as well as the specific needs of small firms in this respect.

The first way to accommodate both interests is by establishing that the worker and the employer must agree on the modality of the leave. As indicated above, countries like **Ireland, Luxembourg** or **the United Kingdom** make use of the possibility of the employer refusing part-time parental leave if an agreement on the use of this modality of the leave is not reached.

Other countries allow the employer to postpone the use of the required leave for a certain period of time on the ground of serious operational reasons (**Belgium**, but only in the private sector, and also **Cyprus, Iceland, Ireland, Liechtenstein, the Netherlands or the United Kingdom**). In this group of countries, some allow for the postponing of the leave only in specific professions (like sailors in **Greece** or firemen in **Italy**) while others allow the refusal of the leave if both parents work for the same employer and wish to take the leave simultaneously (**Portugal**).

In other countries, the possibility of the employer refusing the leave is not mentioned in the law (**Austria, Finland, France, Norway, Poland, Romania, Slovakia or Spain**), thus allowing for the conclusion that the right to take the leave always prevails over the business interests of the employer.

As regards small firms no special arrangements regarding this issue have been mentioned by the experts.

V. Finally, a very interesting picture results from the experts' information regarding special rules or exceptional conditions for access and modalities of application of parental leave to parents of children with a disability or a severe or long-term illness at national level. In this respect, only a few experts reported that under national law there are no specific provisions regarding these situations (**Bulgaria, Lithuania, Luxembourg, Malta and the Netherlands**).

In contrast, most countries pay attention to this issue and establish specific provisions designed to facilitate the care of these children. These provisions may include the establishment of a higher age limit for the child for the parent to have access to parental leave (**Belgium, Cyprus, Croatia, Finland, Greece (sailors), Hungary, Poland, Romania, Slovakia**), extended parental leave and/or provision of a specific and more extended childcare leave, after parental leave, for the purpose of taking care of those children (**France, Germany, Greece, Italy, Portugal, or the United Kingdom**), easier access to part-time leave (**Croatia**) or to part-time arrangements when returning from parental leave (**Austria, Former Yugoslav Republic of Macedonia, Latvia, or Portugal**), or special social security benefits attached to parental leave, in case of handicapped children or children with a long-term illness (**Finland, Iceland**).

This overview allows for the conclusion that most Member States consider it important to reinforce the protection of parenthood rights when the interests of a handicapped child or children with a long-term or serious illness are involved. This orientation might deserve a closer look by EU law in the future, also taking into consideration the possible interaction between this particular topic of extended protection for the parents of these children, and possible gender discrimination issues (especially if the accrued responsibility for these children falls predominantly on the mothers), combined with discrimination on the grounds of disability.²⁸

3.6. Adoption (Clause 4)

I. Clause 2 Paragraph 1 of the Framework Agreement establishes the right to parental leave also as regards adoptive children, while Clause 4 states that it is up to the Member States to evaluate the necessity of specific measures for adoptive parents.

Almost all countries seem to grant adoptive or foster parents the right to leave on grounds of adoption, in compliance with the Directive. The possible exception is **Turkey**, whose expert reports that this right is only granted by a legal provision in the public sector, while in the private sector it depends upon collective agreements.

Despite the general recognition of a right to leave on the ground of adoption by the Member States, there are different approaches on how to grant the leave. In some countries

²⁸ On this subject, see Case C-303/06 *S. Coleman v Attridge Law and Steve Law* [2008] ECR I-05603, where the CJEU established that the prohibition of discrimination on grounds of disability was to be extended not only to a disabled worker, but also the worker that is treated differently from other workers because of his or her child's disability.

adoption leave is a separate type of leave, different from maternity leave and from parental leave, and subject to specific provisions (**Cyprus, Estonia, France, Liechtenstein, Luxembourg, the Netherlands, Norway, Poland, Portugal or the United Kingdom**). Anyway, most experts report that after this specific adoption leave, the parents can take advantage of other care leave including parental leave. This supports the conclusion that, when adoption leave is a separate category of leave, it is conceived as a sort of welcoming leave granted to adoptive parents, comparable to maternity and paternity leave, and not as the only leave for the care of the child that they are entitled to.

In contrast, in other countries there is no autonomous adoption leave, but, in this category, the situation may be slightly different from country to country. In some countries the provisions regarding parental leave are directly applicable in case of adoption, sometimes with minor adaptations (**Denmark, Finland, Germany, Greece, Hungary, Iceland, Italy, Malta, Slovakia, Spain or Sweden**). In other countries, the provisions regarding maternity leave are applicable in case of adoption, also with or without adaptations (**Belgium, Croatia, Former Yugoslav Republic of Macedonia, Ireland**), but as regards these countries the experts report that after using maternity leave in the case of adoption, the parent can take parental leave. Finally, in the third group of countries, in case of adoption either the provisions on maternity leave or the provisions on parental leave are applicable, according to the age of the adopted child (for instance in the **Czech Republic** for babies or very small children provisions on maternity leave will apply, while the adoption of older children falls under the provisions on parental leave).

II. Whether as a separate leave or as a type of maternity or of parental leave, the main adaptations as regards adoptive leave concern the maximum age of the child, the duration of the leave (or the duration of maternity or parental leave when applicable to adoptive children), the payment or social security benefits attached to the leave, and the establishment of specific rights attached to this leave or to the adoption procedure.

As regards the duration of the leave, this may coincide with the duration of maternity and/or parental leave. This happens not only in the countries where the provisions regarding these leaves also apply for adoptive children, but even in countries where there is a separate adoption leave (for instance, in **Portugal**, adoption leave is a separate type of leave but its duration is the same as maternity leave). In other countries, the duration of adoption leave is fixed in a different way.

In some countries the maximum duration of adoption leave varies according to different criteria: the age of the adoptive child (in **Belgium** the leave is longer for small children, and in **France**, the adoption leave lasts for one year, but after this period it is possible to take parental leave until the child reaches the age of three); the number of children adopted (in **Luxembourg**, the duration of the leave is extended from eight to twelve weeks for adoption of more than one child under six). In other countries there is a fixed duration, which is independent of the duration of maternity or parental leave (for instance **Austria, Croatia, or the Netherlands**).

What seems important to take into consideration as regards the countries where adoption leave is a separate type of leave is that this leave can in general be followed by other types of childcare leave, including parental leave, if the adoptive child is still under the age limit fixed for these leaves.

In most countries, the maximum age of the child for the purpose of access to the leave coincides with the age limits for parental leave, but in other countries these limits are different. For instance in **Cyprus**, the age limit of the child is twelve, while the age limit for the purpose of parental leave is eight, in Liechtenstein the age limit of the child is five or three, respectively, for adoption and natural birth, and in **Norway** and **Portugal** the age limit for adoption is fifteen, while parental leave can be taken until the child reaches the age of six (for the first parental leave) or twelve (for other childcare leaves). In **Greece** the age limit is six for both parental and adoption leave, but if the adoption takes place after this age, it is eight for adoption leave.

As regards payment during the leave, there may also be specific provisions, like the establishment of social security benefits attached to the leave, that do not always coincide with the maximum duration of the leave. In this context, the expert from **Greece** reports that in the public sector, a paid three-month leave is formally granted to the mother upon adoption, but the Greek courts have been interpreting this legal provision in a wide sense, in order to also grant her the nine-month paid parental leave applying in the public sector; there is no explicit provision on parental leave for the adoptive father in the public sector. Also in **Cyprus**, the payment of adoptive leave seems to be granted only to the mother. And as regards social security benefits, for instance in **Sweden**, there is a special social security benefit in case of international adoption.

Other experts report on specific rights of workers involved in adoption procedures. In this sense, the expert from **Denmark** indicates the right to time-off from work to go abroad in case of international adoption, and the expert from **Portugal** reports on the legal provision that allows for time-off to attend to administrative procedures related to adoption.

3.7. Employment rights and non-discrimination (Clause 5)

I. Clause 5 of the Framework Agreement protects workers against dismissal or less favourable treatment on the grounds of an application for, or the taking of, parental leave. This Clause also grants the worker the right to return to the same job or, if this is not possible, to an equivalent or similar job at the end of the leave, requires acquired rights attached to the employment relationship to be protected during the leave as well as requiring the continuity of the entitlement to social security cover. Under this clause, it is up to the Member States to define the situation of the employment contract during the leave and the possible remuneration of social security compensation of the worker while on leave.

At national level, the EU provisions concerning the protection of the workers against dismissal and against discriminatory treatment on the grounds of parental leave seem to have been implemented. Unsurprisingly, the major differences between the countries regard payment during the leave.

II. As regards protection against dismissal, all experts mention that the dismissal of the worker during parental leave – and in some countries also in the period immediately following the return from the leave (for instance, **Austria**, **Croatia** and **Greece**) – is forbidden or unlawful under national law, giving a right to reinstatement and/or compensation to the worker, as well as subjecting the employer to administrative fines. Only the expert from **Hungary** indicates that if both parents take parental leave, only the mother is protected against dismissal, and following the return from the leave, the protection from dismissal is granted only to the mothers and single parents until the child reaches the age of three. In this respect, the expert considers that here national law is not in accordance with EU law.

In most countries the fact that the worker is on leave does not prevent all forms of termination of the labour contract. In this sense, most experts report that a dismissal on objective grounds related to the operation or the termination of a fixed-term contract at the end of the term is allowed. However, since the dismissal during parental leave is presumed unlawful, in a few countries (for instance **Finland** and **Portugal**), it is up to the employer to prove that the termination of the contract was grounded on objective reasons and had nothing to do with the fact of the worker being on parental leave.

Also in most countries dismissal and other less favourable treatment of a worker on the grounds of an application for, or the taking of, parental leave is considered discrimination, the link between reconciliation practices and equality provisions being well established. Therefore provisions designed for the protection of the worker against discrimination apply in these situations, justifying, for instance, the reversal of the burden of the proof, higher compensations in case of dismissal (**Belgium**) or the submission of the dismissal to the intervention of an administrative authority or of the court, in order to check for its ground (**Germany** or **Portugal**).

The possible exception to the recognition of the link between reconciliation practices as regards parental leave and discrimination provisions are **Latvia** and **Lithuania**, whose experts report that national law does not establish an explicit link between dismissal during parental leave and the non-discrimination principle. The expert from **Austria** also recognises that there is no clear link between parental leave issues and the non-discrimination principle, and this can raise questions regarding the compliance of national law with EU provisions.

III. In most countries, at the end of parental leave, workers have the right to return to the same job or if this is not possible, to an equivalent or similar job consistent with their employment contract or relationship. Only the expert from **Belgium** reports that such a right is not explicitly provided in the private sector, but only in the public sector, and the experts from **Germany**, **Hungary**, and **Lithuania** indicate that such a right is not explicit in the law. As regards **the Netherlands**, the expert reports that a specific right to return to the same or to an equivalent job is not explicit in Dutch legislation (and this situation has been the basis for an infringement procedure against **the Netherlands** by the EC), but the expert considers that such a right is a consequence of the general principle of non-discrimination established in national law and applicable to workers on parental leave. Finally, the expert from the **United Kingdom** indicates that the protection of the worker as regards the return to the same or to an equivalent job after the leave is stronger as regards initial parental leave than as regards additional leaves for care purposes.

As to acquired rights or rights in the process of being acquired by the worker on the date on which parental leave starts, most experts report that these rights are maintained as they stand until the end of the parental leave or may be acquired while on leave. This is generally indicated as a consequence of the employment contract being considered in a ‘suspension’ status (this is the situation in almost all countries), or completely active during the leave (as in **Belgium**, but only in the public sector).

Despite this general picture, some experts report on specific changes to acquired rights during the suspension of the employment contract. For instance, the expert from **France** indicates that seniority is counted only on half-time basis during the leave, and the expert from **Germany** reports that several rights are reduced, such as the right to annual leave and the right to Christmas allowance in the public sector.

As regards the entitlements to social security cover for the worker, including healthcare, the experts report that these entitlements are not affected during the period of parental leave. In **Greece**, in the private sector, social security coverage continues, provided the workers pays his/her own social security contributions and those of the employer.

IV. As indicated above, the main differences between the countries regard payment during the leave.

In almost all countries, parental leave is not remunerated by the employer. In a few countries such payment can be established in the employment contract or, more frequently, by collective agreements, either as a complementary payment to a social security allowance (**France** or **Sweden**), or as a direct payment by the employer. However, in this latter case, the employer is totally or partially reimbursed from social security (**Denmark** and **Norway**).

In many countries parental leave gives a right to a social security allowance, but the situation varies considerably at national level, as regards the amount of the allowance and how it is fixed, the conditions of access to the allowance and the time limits for the payment. Also, in some countries, the experts report that the right to pay and to social security coverage during parental leave exists only in the public sector (**Greece**). In **the Netherlands**, parental leave is in principle not remunerated by the employer, but collective labour agreements may contain provisions entitling employees to remuneration during parental leave. It is more common, but not standard, to retain (full) salary in the public sector.

As regards the amount of the allowance, in some countries it corresponds to a fixed amount (**Belgium**, **Luxembourg** or **Slovakia**), while in other countries it corresponds to a certain percentage of the worker’s salary. In this latter case, the percentage of the salary taken into account for the purpose of calculating the leave is very different: while in some countries

the basis for the calculation of the allowance can go up to 100 % of the salary (for instance in **Sweden**, 80 % in the first 390 days of the leave up to a certain ‘ceiling’ of the benefit scheme (now EUR 48 800; SEK 444 000), and from 65 % to 100 % of the salary in **Germany**, for a leave that can go up to fourteen months, or 70 % of the salary for twelve months in **Latvia** – which actually amounts to 101 % of salary compared to salaries after tax in **Latvia**), in other countries the basis for this allowance is much lower (for instance **Portugal**, where the leave is paid on the basis of 25 % of the salary, or **Italy**, where the basis is 30 % of the salary). In other countries, the leave is paid for a longer period in the public sector than in the private sector (**Malta**), or is only paid in the public sector (**Greece**).

It is also quite common for the value of the allowance to diminish at a later stage of the leave or in case of longer leaves (**Austria, Croatia, Czech Republic, Latvia, Lithuania, Norway, Romania** or **Sweden**, where you can choose the order of when to use the days with income-related or basic/minimum pay), or for the allowance to be paid only during part of the leave (**Italy** or **Former Yugoslav Republic of Macedonia**, where the expert mentions the existence of an ‘unpaid parental leave’ that may follow the ‘paid parental leave’). Also in countries where there are successive forms of parental leave, or a short parental leave (in the sense of EU law), followed by other childcare leaves, it is common that only the strict or short parental leave is paid from social security, while other childcare leaves are not paid (**Portugal**). Finally, in several countries, the right to the allowance is in some way independent from the right to take the leave, in the sense that the leave is granted for a longer period than the allowance, so there are periods of the leave that are not paid and the parents must take that into account when they decide to take the leave (**Denmark**), or each parent has an individual right to the leave but the social security allowance is only paid to one of them (**Hungary**).

Finally, in several countries there is no legal obligation placed on the employer or by the social security system to pay for the leave (**Cyprus, Ireland, Liechtenstein, Greece**, and **the Netherlands** as regards the private sector, **Spain** and **United Kingdom**), although some experts mention that a payment can be stipulated by collective agreement (**the Netherlands**), or agreed between the parties (**Greece**) in the employment contract (**United Kingdom**).

As regards the conditions to have access to the allowance, in some countries the right to the allowance may depend on the seniority or, more commonly, on a minimum period of contributions to the social security system (e.g. **Lithuania, Luxembourg, Romania** and **Slovakia**), or on the level of income of the family (**Poland** in case of childcare leave following paid parental leave). Also, some experts report that the allowance for parental leave may be higher for a disabled child or a child that is seriously ill (**Italy**).

When considering the countries together, it is possible to conclude that the countries from Northern Europe tend to grant the social security allowance for parental leave for longer periods and on a higher basis. In contrast, in countries from Southern Europe (but also in some other countries, like **Belgium, Netherlands** or **the United Kingdom**) the allowance associated with this leave is low and granted for a short period of time, or the leave is unpaid.

As we will see below, the experts consider the payment of the leave, either by the employer or by the social security system, as a decisive factor for the practical use of the leave.

3.8. Return to work (Clause 6)

I. Clause 6 of the Framework Agreement establishes the right of the worker, when returning from parental leave, to ask for specific working-time arrangements or other changes in the organisation of the work for a set period of time in order to facilitate the reconciliation of work and family life, but also taking into account the interests of the employer (Paragraph 1). Paragraph 3 of this Clause also invites employers and employees to keep in touch during the leave and to adopt other measures designed to facilitate the reintegration of the worker at the end of the leave.

II. As to the worker's right to request changes to their working hours and/or patterns for a set period of time after the return from parental leave, most countries seem to provide for specific working-time arrangements that the worker may apply for. Only the experts from **France, Greece, Italy, Lithuania, Romania** and **Spain** report that this issue is not addressed at national level, but it can be settled by an agreement between the employer and the worker, and the collective agreements also deal with the subject (**Italy**). Some experts mention that national law had to be adapted in order to meet this provision of Directive 2010/18 (**Denmark** and **the Netherlands**).

In many countries, fewer working hours on a daily basis, flexible working time arrangements and part-time work for the purpose of care are granted by the law, with variable time limits. Also, in some countries the law grants the reduction of working time for more specific purposes, like breastfeeding (as is the case in **Cyprus, Hungary, Portugal** or **Romania**) or exempts the worker from the obligation to work overtime or to do night work until the child reaches a certain age (**Check Republic, Former Yugoslav Republic of Macedonia, Portugal**). In some of these countries, the interests of the workers seem to prevail over the employers' interests, since no reference is made to the possibility of refusing the changes requested by the workers.

In other countries however, the request for job adaptations when returning from parental leave depends upon an agreement with the employer. Such an agreement is required either in all cases (**Bulgaria, Estonia, Liechtenstein, Luxembourg, Malta, Slovakia, United Kingdom, or Ireland** whose expert criticises domestic law, because the employer does not have to justify the refusal of the request of the worker), or in specific situations, for example as regards small companies or depending upon the duration of the changes required. In some countries, the adaptation of working-time arrangements depends upon the agreement of the employer in small firms: for instance in **Austria**, the right to a part-time job is only granted in firms with more than twenty workers and only for workers with three or more years of seniority, and in all other cases the arrangements must result from an agreement with the employer; in the same sense, the right to reduced working time in **Germany** is granted only in firms employing more than fifteen persons; also in **the Netherlands**, small companies with fewer than ten workers are not subjected to these obligations. In other countries part-time arrangements intended to last for a long time are submitted to the agreement of the employer (**Finland**). A somewhat different scheme is the one in the **United Kingdom**, where the change of working-time arrangements, including the shift to a part-time job, must be agreed between the parties but is in principle agreed on a permanent basis.

Still, in several countries where the right to request changes to working hours or the request to change the employment contract from full-time to part-time is granted by the law, the request of the worker can be refused for serious operational reasons (**Germany, Finland, the Netherlands, Norway, Portugal**), but in some of these countries this refusal can be challenged before the court (**Norway**) or is checked by a public agency that deals with equality issues (**Portugal**).

Finally, as regards some countries, the right to change working-time arrangements after parental (leave is granted only in the case of a child that is seriously ill or handicapped, while other countries allow for more flexibility in working time or for longer schemes of reduced working hours or part-time work for the parents of those children (**Portugal**).

III. As to the mechanisms to promote/ensure that workers and employers maintain contact during the period of leave and make arrangements for any appropriate reintegration measures, the great majority of the experts report that there is no legal obligation on the parties to stay in contact during parental leave. Either this issue is not regulated at national level (**Belgium, Croatia, Cyprus, Denmark, Sweden, Former Yugoslav Republic of Macedonia, Ireland, Latvia, Liechtenstein, Luxembourg, Norway, Poland, Romania**) or there are only non-binding provisions establishing the right of the worker on leave to receive information regarding the company or the right to stay in contact with the company (**Austria, Germany, Greece**, but only as regards maritimes, and **Malta**).

Specifically as regards the return from leave, in several countries the right to specific professional training intended to facilitate the reintegration of the worker in the company is established (**France, Portugal or Spain**). In the same sense, the expert from **Italy** reports that, although this specific issue is not addressed by the law, collective agreements often establish professional training for this purpose, and the expert from the **United Kingdom** indicates that, while on leave, the worker may be allowed to work for a few days, as a measure to facilitate the return to full professional activity.

3.9. Time off from work on grounds of force majeure (Clause 7)

I. Clause 7 of the Framework Agreement establishes the right to time off from work on grounds of *force majeure* related to urgent family reasons (Clause 7, Paragraph 1), leaving it up to the Member States to establish specific conditions to have access to such a right and its time limits (Clause 7, Paragraph 2).

National reports show that the right to time off is in general recognised, but the Member States make wide use of the provision of Clause 7, Paragraph 1, by establishing conditions and time limits in the implementation of such right.

II. Most countries establish the right to time off on the grounds of *force majeure* related to care.

The situations of ‘care’ taken into consideration for the purpose of this right include sickness, accident or hospitalisation of the child, in most countries, but in other countries these situations also include time off for the father to assist the mother during childbirth (for instance in the **Czech Republic**; and it is especially regulated for civil servants in **Germany**) which, as indicated above, is qualified by other countries as paternity leave. Also, in many countries, urgent family reasons do not only cover the care for a small child, but also the care for older children and other relatives. Finally, short-term and even long-term leaves for the purposes of urgent care for children or for other relatives, in addition to parental leave, are also described by some experts in this context (for instance **Greece and the Netherlands**).

An interesting point that comes to the fore in the national reports is that almost all countries interpret the notion of ‘force majeure’ for the purpose of the right to time off in a restrictive manner. In this sense, the urgency of the situation as well as the absolute need of the presence of the worker have to be demonstrated, while some experts mention that under national law, these absences from work have to correspond to ‘exceptional circumstances’ or to an ‘emergency situation’ (**Latvia and United Kingdom**).

III. The Member States also stipulate strict conditions and procedures in view of exercising the right to time off. In many countries, time off requires a notice period, except in urgent and unexpected situations, and the justification for the time off must be presented to the employer (**Cyprus, Ireland, Liechtenstein, Luxembourg or Portugal**).

As to time limits, almost all countries establish annual time limits for these absences of the worker (**Austria, Belgium, Bulgaria** (except when caring for a sick child), **Cyprus, Estonia, Greece, Ireland, Luxembourg, Former Yugoslav Republic of Macedonia, Malta, Slovenia or Spain**). These time limits vary greatly, but the periods tend to be longer when the situation concerns a small child or a handicapped child or a child who has a long-term illness (**Estonia, Germany, Italy, Norway or Portugal**), than when it concerns older children or other relatives of the worker. In some countries, single parents have higher limits for time off on the grounds of force majeure related to care (**Norway**). In other countries, time off is granted but is later deducted from the annual leave time (**Malta**).

Finally, national law varies significantly as regards the payment or compensation for time off. As a rule, time off on the grounds of care is not remunerated by the employer, with the possible exception of the public sector (for instance **Greece**). In some countries, however, this lack of remuneration by the employer is compensated by a social security allowance. However, this allowance varies among countries, as regards the concrete amounts and how they are calculated, the access conditions and for how long it is paid, since the recognition of

the right to time off does not necessarily coincide with the right and/or to the extension of the related allowance.

3.10. Final provisions (Clause 8)

I. As regards the compliance of national law with the minimum requirements specified in Directive 2010/18, the great majority of the countries seems to be in compliance with the Directive, in the assessment of the experts.

Lack of compliance or less favourable national provisions, when compared with the Directive, is indicated by the experts only in relation to specific points, like the scope of the provisions (**Greece** as regards less favourable treatment of fixed-term employees in the public sector; and **Hungary**, as regards the very short fixed-term employment contracts and the ‘executive employees’), lack of individualisation of the right to parental leave (**Greece**, in the public sector), the vague separation between parental leave and maternity leave which could be contrary to the autonomous nature of both leaves in EU law (**Norway**), the maximum age of the child for the purpose of the right to parental leave being lower than eight (**Greece, Poland and Portugal**), the granting of the leave only on a full-time basis (**Latvia and United Kingdom**), the lack of a clear link between the rights attached to parental leave and the non-discrimination principle (**Austria or Lithuania**), the granting of acquired rights during the leave (**Belgium**, as regards the private sector), the scope of the provision regarding protection against dismissal during the leave (**Hungary**), the maintenance of contact between the worker and the company during the leave (**Belgium**), the right to request changes in working-time arrangements after the leave (**Spain**) or the fact that these changes are granted on a permanent basis (**United Kingdom**), or the excessive strictness of national provisions as regards time off on the grounds of *force majeure* (**Spain**).

In addition to the formal compliance of national law with the Directive, some experts mention that domestic legislation regarding parental leave as such or combined with other family-related leaves is confusing (**Belgium, Greece, Poland or Portugal**).

II. Many experts also indicate several issues where national legislation is more favourable than EU provisions.

More favourable provisions at national level indicated by the experts are related to three points: the duration of parental leave, which in many countries exceeds the minimum duration of four months, required by the Directive, either directly or in combination with other childcare leave after parental leave (for instance **Czech Republic, Cyprus, Denmark, Finland, France, Germany, Greece** (public sector), **Hungary, Italy, Luxembourg, Norway, Poland, Portugal, Slovenia**); the extension of the period of non-transferability of parental leave beyond one month as prescribed in the Directive or the total non-transferability nature of the leave (**Croatia, Cyprus, Germany, Italy, Luxembourg or Spain**); and also the payment of the leave, which is not imposed under EU law, but is common at national level, mainly through the social security system and despite the many variations that were accounted for (**Finland; Germany; Hungary; Greece**, in the public sector; **Luxembourg; Norway**).

Some experts report that more favourable treatment at national level is often introduced by collective agreements (**Greece**, in the private sector, and **the Netherlands**).

3.11. Sanctions (Article 2)

I. Article 2 of Directive 2010/18 establishes that it is up to the Member States to provide for effective, dissuasive and proportional sanctions for violations of the rules provided by the Directive.

The violation of rights related to parental leave at national level gives rise to several sanctions that are not very different among the Member States. According to the experts these sanctions may include the right to damage compensation, and in case of dismissal related to the taking of or applying for parental leave or to the exercise of related rights, the right to

readmission and/or to dismissal compensation as a consequence of the qualification of such dismissal being regarded as an unlawful dismissal. However, in **Greece** the sanction is in principle *restitutio in integrum*; the unfavourable treatment is deemed never to have happened, the worker retains his/her status, and is entitled to uninterrupted pay.

The link between parental leave and the gender equality principle is also relevant for the purpose of sanctions. In this sense, for instance, the expert from **Finland** indicates that damage compensation for the violation of rights related to parental leave has no upper limits and the same goes for the dismissal compensation, which is higher because it is qualified as discriminatory dismissal (**France, Poland or Portugal**). In the same sense, the fines applicable to the employer are those prescribed for discriminatory practices.

Also, the violation of provisions related to parental leave may give rise to the application of fines and in countries like **Belgium** the refusal of the leave by the employer is considered as a criminal offence. In **Italy** an interesting sanction indicated by the expert is the possibility of the company to lose public funding or other public benefits on the grounds of a discriminatory practice linked to parental leave.

II. As to the nature of the sanctions established at national level, most experts consider that the sanctions are in general dissuasive and proportional. Nonetheless, in some countries the value of the fines is considered low (**Former Yugoslav Republic of Macedonia or Romania**). Other experts point out that the problem is not so much in the sanctions *per se* but in the fear of the workers to take action as a result of the violation of their rights (this is the opinion of the experts from **Greece and the Netherlands**).

3.12. Case law

As regards case law the situation at national level is the following.

In most countries there is no case law regarding parental leave or the number of actions brought before the courts is insignificant (**Bulgaria, Cyprus, Italy, Luxembourg, Malta, Portugal, Slovakia or Slovenia**).

In countries where case law in this area exists, the more common problems brought before the courts relate to the following issues: the amount of damage compensation for unlawful dismissal during parental leave, when the leave is taken in the modality of part-time leave (case reported by the expert from **Belgium**²⁹); the way to calculate pay during parental leave and specifically if extra pay, higher pay for certain holidays and rights to bonus should be considered during the period of parental leave (cases reported by the expert from **Finland**³⁰); surrogacy and parental leave (one case reported by the expert from **Austria**³¹); the granting of parental leave to categories not receiving it and its duration in case of multiple childbirth (cases reported by the expert from **Greece**³² and from **Poland**); the right to ‘emergency dependent leave’ in several cases reported by the expert from the **United**

²⁹ Labour Court of Appeal in Brussels, Case Judgment of 9 November 2012, Algemene rol no. 2011/AB/648, unreported, available in Dutch on www.juridat.be, as mentioned by the expert.

³⁰ Labour Court, Case TT 1998:34; Labour Court stated in Case TT 2003:86; Labour Court stated in Case TT 2003:86, as reported by the expert.

³¹ In 2012 the Constitutional Court of Austria issued a ruling that limits the territorial scope of the absolute ban on surrogate motherhood. In this case, the Court stated that children born by surrogate mothers to Austrian biological parents in a country where surrogacy is legal have to be recognised as legal children of the biological parents by Austrian authorities. As the expert mentions, although this case deals only with nationality rights, once these rights are recognised the entitlements of the parents to family-related leave will have to be considered. (Constitutional Court (*Verfassungsgerichtshof, VfGH*), 11 October 2012, B 99/12 ua, https://www.ris.bka.gv.at/Dokumente/Vfgh/JFR_09878989_12B00099_01/JFR_09878989_12B00099_01.pdf (as indicated by the expert), accessed 25 June 2014.

³² CS judgments 3590 and 3591/2012 (No. 4.1. above: judges) and the Administrative Court of Appeal (ACA) of Thessaloniki which made the preliminary reference to the CJEU in *Chatzi*; they upheld the parents’ right to additional leaves in case of multiple births, also relying on the Fundamental Rights Charter and international conventions. The ACA judgment (ACA 1842/2010.) applied the CJEU judgment in *Chatzi* in the best possible way in view of the situation in Greece, in the opinion of the expert.

Kingdom,³³ where the notion of ‘unexpected’ family need of the worker justifying the leave was discussed as well as the extension of the leave to take care of a sick child, which the court determined as being necessary to deal with an immediate crisis. There have also been a number of cases in **Ireland** on *force majeure* leave.

The expert from **Austria** also reports, as the latest development in the area, that the Supreme Court has submitted questions to the CJEU concerning the calculation of a pay element related to child support in cases of part-time work and of parental part-time work based on Paragraph 4 No. 2 of Part Time Directive 97/81/EC.³⁴

In countries where there is case law, the experts indicate that national case law is in line with the developments of the CJEU in this area (**Czech Republic, Denmark, France, Germany, Latvia, the Netherlands, Norway and Sweden**).

Nonetheless, for some countries, national case law going against EU provisions is mentioned by the experts. The expert from **Romania** reports on national court decisions that may go against EU law as regards the notion of discrimination in parental leave that is defined in a very strict way.³⁵ The expert from **Finland** reports on the *Kiiski* case, concerning the refusal of maternity leave immediately after the return of the worker from parental leave, which was later considered as discrimination by the CJEU,³⁶ as mentioned above.³⁷

In contrast, a positive role by national courts in some countries in promoting reconciliation is acknowledged. For instance in **Spain**, the expert mentions the role of the Spanish Constitutional Court in this area which declared the right to balanced reconciliation of family and working life as a fundamental right in the light of the Spanish Constitution.³⁸ And the expert from **Greece** emphasises the important contribution of national courts to the interpretation of national provisions in this area in accordance with EU law, giving examples of cases where the court decided in favour of granting parental leave to categories not receiving it or longer periods of parental leave in case of multiple childbirth (as mentioned above), or declared a reduction of parental leave inapplicable.

3.13. Practice and other relevant issues

I. In addition to legislative developments as regards the implementation of Directive 2010/18 and case law, some information on the practical use of parental leave and other family-related leaves at national level is essential in order to obtain a comprehensive picture of this issue and of the major challenges or problems that still exist in this area.

The experts were asked if family-related leaves are actually used in practice; if they are, whether they are taken by both parents, or more frequently by mothers; if there are positive action measures at national level to promote a more balanced share of family responsibilities between both parents in relation to these leaves and if there are still any relevant gaps at national level.

II. As to the practical use of parental leave and other family-related leave, most experts report that the leave is actually used in their own countries, although the figures vary greatly

³³ Decision in *Qua v John Ford Morrison Solicitors* [2003] ICR 482), decision in *Rodway v New Southern Railways Ltd* [2005] ICR 1165, Decision in *Royal Bank of Scotland v Harrison* [2009] ICR 116).

³⁴ Case C-476/12, Österreichischer Gewerkschaftsbund vs. Verband österreichischer Banken und Bankiers; Opinion of Advocate General Sharpston of 13 February 2014: <http://tinyurl.com/obmkdbn>, as indicated by the expert. In this case, the Court stated that children born by surrogate mothers to Austrian biological parents in a country, where surrogacy is legal, have to be recognised as legal children of the biological parents by Austrian authorities. As the expert mentions, although this case deals only with nationality rights, once these rights are recognised the entitlements of the parents to family-related leave will have to be considered.

³⁵ Court of Appeal of Bucharest, Judgment No. 4585 of 24 July 2012 and Court of Appeal of Bucharest, Judgments Nos 3918 of 9 December 2013 and 1712 of 27 May 2013, as indicated by the expert.

³⁶ Case 116/06.

³⁷ Section 2.3.

³⁸ Judgment no. 26/2011 of the Constitutional Court 26/2011 of 14 March 2014, available at: http://www.poderjudicial.es/cgpj/es/Temas/Igualdad_de_Genero/Legislacion_y_jurisprudencia/Jurisprudencia_espanola/Conciliacion_de_la_vida_laboral_y_familiar/STC_26_2011_14_03_2011, (indicated by the expert), accessed 25 June 2014.

between the countries. Only a few experts report that parental leave is seldom used in practice (**Greece**, as regards the private sector, **Poland** regarding unpaid child-care leave, and **Portugal**) and other experts report that the use of the leave is traditionally low but is growing (for instance **Belgium**). However, as regards the countries where the leave is reported as being used, it is important to bear in mind that in some of them parental leave is integrated with maternity leave, so in the sense of EU law it is not considered as an autonomous leave, following maternity leave (**Norway**). This being the case, it is difficult to draw conclusions as regards the practical use of parental leave in a strict sense.

A very significant conclusion that becomes evident from the national reports as regards the use of the leave is that the effective taking of the leave depends greatly on the payment system attached to it. In fact, the experts mention that in their countries parental leave is not taken in practice because it is neither paid for by the employer nor compensated (or it is compensated at a flat rate) by the social security system. The same goes for the countries where the leave is paid in the public sector, but not in the private sector, as in **Greece**: according to the expert this is the reason why the leave is taken only in the public sector, and rarely in the private sector. Finally, even in the countries where parental leave gives a right to a significant allowance from the social security system (on average from 60 % to 100 % of the salary), when the maximum period of the allowance is lower than the maximum period of the leave itself (which is the most common situation) the experts report that the parents tend to limit the leave to the duration of the allowance (**Norway, Finland or Denmark**).

Most experts consider that the payment of the leave by social security is a decisive factor for its practical use (**Croatia, Cyprus, Greece, Germany, Latvia, Liechtenstein, Malta, Portugal, United Kingdom**).

III. As to the question of the share of parental leave and other family-related leaves between the parents, all national reports agree on one conclusion: parental leave and other family-related leaves are still predominantly taken by the mother. In fact, the numbers presented by the experts on the basis of national statistical data clearly demonstrate that the share of the leaves between the parents is still very unbalanced, although a little less in countries like **Finland, Norway or Sweden** than in other countries.³⁹

Some reasons are given for this situation. First, the traditional perspective on the social roles of men and women (with men more devoted to professional life and women more devoted to the family) is certainly responsible for this situation. Many experts recall that the male bread-winner model is still predominant, with the expert for **the Netherlands** stating, expressly, that parental leave is considered a ‘female leave’, at least when taken full time, and with the experts from **Austria or Hungary** mentioning that there is a social pressure on mothers to stay at home to take care of young children. The expert from **Austria** adds that this pressure is not without consequence in the future because some mothers eventually choose not to come back to work after parental leave or after long-term leaves for care reasons.⁴⁰

Second, the gender pay gap is also considered responsible for this unbalanced picture, especially in countries where the leave is not paid or is paid at a flat rate. Some experts mention that as women earn less than men, the loss of income that comes with the leave is less if the mother takes it than if the father chooses to do so (**Croatia, Italy, Poland, or the United Kingdom**), while others say that the payment of the leave is essential to promote gender equality (**Liechtenstein**).

Some experts also consider that the combination of gender stereotypes regarding care and the lack of childcare facilities and of a family-friendly environment in companies is to be held

³⁹ As examples, in Sweden, the share in the taking of parental leave in 2012 was 75.5 % for the mothers against 24.4 % for the fathers, while in Norway, the leave taken by the mothers was 82 %, as regards the part of the leave that is not exclusive for the other parent. A very different picture is the one presented by other countries, like the Czech Republic, where parental leave taken by the mothers represents 98 % of the total, or like Estonia, where only 6 % of the fathers use parental leave, or Croatia (2.5 %) or Malta (1 %).

⁴⁰ In this sense, the expert from Austria mentions that only 38 % of the women return to work at the end of parental leave, and only 63 % after the child reaches the age of three.

responsible for the unbalanced share of the leaves between mothers and fathers (for instance the expert from **Hungary**).

Finally, the level of education and the location of the family are indicated by some experts as influential factors in the share of the leave: as indicated by the experts from **Sweden** and **Finland**, a more balanced share of the leaves is more common for higher-educated couples and also more frequent for couples who live in a city than for those who live in the countryside. Also, the expert from **Sweden** indicates that the couples working in the public sector tend to share the leave more often than those who work in the private sector.

An interesting finding with evident implications in the share of the leave between the parents comes from the observations of the experts as regards paternity leave or the non-transferable period of parental leave. Despite the feminine perception of parental leave as a whole, as described above, when there is an autonomous paid paternity leave, or a period of parental leave reserved for the father, also paid, these leaves or periods of leave are in fact used, by the fathers (this situation is reported in countries like **Germany**, in relation to parental leave, **Finland**, in relation to paternity leave and to the ‘fathers month’ of parental leave, **Norway**, as regards the ‘men’s quotas’ of parental leave, and **Portugal**, as regards paternity leave). These findings show the importance of provisions intended to promote the individualisation of the right to leave and of positive action aiming at the promotion of the role of fathers, with adequate financial support.

Finally, some experts mention that fathers seem to be more open to part-time parental leave and to other part-time schemes or to teleworking for the purpose of care than to full-time parental leave (**France** and **Malta**).

IV. The experts do not report many gaps in national legislation apart from those already indicated, but they identify a number of positive actions that could promote a more balanced participation of men and women in care responsibilities, such as the following ones: the father’s month of parental leave and a bonus period (meaning an extended period of leave) just for fathers for the purpose of care (**Finland**); an enlarged ‘quota system’ (meaning the fixing of longer periods of non-transferable leave) for each parent in the taking of the leave (**Norway**); the increased payment of parental leave for a certain period if the other parent takes it (**Germany**); or the payment of social security benefits where the leave is unpaid (**Greece**); and the enlargement of day care facilities for children, either subsidised by the State or by the municipalities (**Sweden**).

However, almost all experts agree that the main problem as regards the practical use of parental leave lies in the payment of the leave, and, in this context, some are sceptical about the possibilities of real progress in the future, taking into consideration the present economic situation of Europe and of their own countries (e.g. the experts from **Greece** and **Italy**), while others indicate that recent changes in legislation aiming to fight the economic crisis have already lowered the level of protection as regards reconciliation practices (this is the opinion of the expert from **Spain**).

4. Conclusions

I. The summary of the findings at national level presented above supports some general conclusions in addition to the specific conclusions reached on the different topics above. These conclusions regard the implementation of Directive 2010/18 and, more broadly, the relationship between parental leave and other leaves and arrangements designed to promote the reconciliation of work, private and family life, including maternity leave, as well as the relationship between the topic of reconciliation and gender equality, and also the main weaknesses in this area that still exist.

II. The implementation of Parental Leave Directive 2010/18 at national level does not seem to have caused major problems, since the countries already complied or were in the process of complying with the minimum requirements laid down by the Directive, except on minor points.

In contrast, the reports show that often reconciliation provisions at national level go beyond the minimum requirements of EU law for several issues: duration of parental leave, payment or compensation provided during the leave; modalities of parental leave, mainly throughout successive childcare leaves; the individualisation and the non-transferability principle of parental leave; the right to paternity leave; specific or adapted provisions for handicapped children or children who are seriously ill; and other leaves and working-time arrangements for the purposes of care for relatives other than children. Some of these schemes deserve a closer look in future developments of the EU in this area.

Also the link between reconciliation provisions and practices and the gender equality principle seems to be well established at national level, and this fact has led to fruitful consequences. On the one hand, reconciliation provisions take advantage of the gender equality *acquis* especially regarding issues such as the different treatment of the worker as a result of taking or applying for leave, by qualifying such treatment as discrimination, or regarding the remedies and sanctions for the violation of reconciliation provisions. In addition, the awareness of the countries as regards the link between the two topics makes the side-effects of reconciliation practices in gender equality more visible and inspires them to implement positive action to promote a more balanced sharing of family responsibilities, including positive action designed to promote the fathers' role in the family.

III. As to the main weaknesses of national legislation as regards parental leave and other family-related leaves and arrangements, the above analysis allows us to identify two major problems.

The first problem is the lack of clarity of national legislation in some countries as regards the relation between the several types of leave aiming at the reconciliation of work, private and family life. As described, all countries provide for several types of leave, which may include pregnancy, maternity, paternity, parental, adoption, childcare and other care leave, as well as for the right to time off from work for family reasons and special working-time arrangements, including part-time work. However, not only is the combination of these leaves not always clear at national level (with possible negative consequences as regards the transparency of the system), but also when comparing different countries. Even the identification of each type of leave differs substantively. This situation makes it very difficult to understand the different systems, and even more difficult to compare and assess the level of protection granted by each of them.

In future developments of EU law, both as regards parental leave and as regards maternity leave, the methodological question of how these issues should be addressed might need to be put forward. In fact, an integrated approach of EU law to the subjects of maternity protection and reconciliation of family and working life (rather than the separate approaches that result from the fact that parental leave is addressed by the social partners while pregnancy leave is addressed by the Commission), might contribute to more transparent and straightforward national systems in this area, which would also be easier to assess.

The second and more substantive problem in this area is of an economic nature.

When reading the national reports, it becomes evident that, more than the traditional stigma on the social roles of men and women that links care responsibilities predominantly to women, the payment of or compensation for the leaves is indeed the key factor in the practical use (the more equally shared use) of the leaves and working-time arrangements designed to facilitate the reconciliation between work and family life. Even if this problem cannot be addressed under the present unfavourable economic circumstances, it should be taken into consideration in the future.

Part II

National Law: Reports from the Experts of the Member States, EEA Countries, Former Yugoslav Republic of Macedonia and Turkey

AUSTRIA – Martina Thomasberger

1. Context

Austrian legislation contains varied provisions for leaves aimed at facilitating the reconciliation of work, private life and family life. In most cases there are corresponding provisions for social benefits or for family benefits and for continued inclusion in social security systems.

The oldest legislation containing leave for family reasons concerns maternity leave. The first Maternity Protection Act was introduced in 1942; the personal scope covered all female workers in the private sector. It was revised in 1956 and in 1979 and is still the principal piece of legislation concerning maternity leave and parental leave for female workers.¹ For constitutional reasons maternity protection and parental leave provisions for female state and municipal personnel and for female agricultural workers had to be regulated separately; there are no relevant differences however in the factual and personal scopes of all maternity protection provisions.

Parental leave immediately following maternity leave until the first birthday of the child was first introduced into the Maternity Protection Act² in 1960 and at first only applied to female employees and civil servants. The principles applying to parental leave have remained the same since then: parental leave immediately follows maternity leave, it depends on the volition of the mother (since 1989 of both parents respectively), who has to notify the employer within the statutory periods, and parents are protected against dismissal until four weeks after the end of the parental leave period.

In 1989 a complementary Act implementing parental leave for male workers was introduced (*Elternkarenzurlaubsgesetz*, EKUG, from 2004 *Väterkarenzgesetz*, VKG).³ The personal scope covers workers and employees in the private sector, federal civil servants and teachers and homeworkers, the factual scope encompasses the same provisions for parental leave as the Maternity Protection Act. Again the parallel provisions for male provincial and municipal personnel and for male agricultural workers were implemented in the constitutionally required separate pieces of legislation.

Between 1991 and 2004 the parental leave period was extended until the second birthday of the child, provisions on parental part-time work were introduced, and the Parental Leave Directive 96/34/EC was implemented.⁴

¹ Maternity Leave Act (*Mutterschutzgesetz*, MSchG) BGBl 1979/221, available at: https://www.ris.bka.gv.at/Dokumente/BgblPdf/1979_221_0/1979_221_0.pdf, accessed 28 February 2014.

² Paragraph 15 Maternity Protection Act, BGBl No. 240/1960, available at: <https://www.ris.bka.gv.at/Dokumente/Bundesnормen/NOR40154296/NOR40154296.pdf>, accessed 10 March 2014. All other relevant legislation was amended within a relatively short period.

³ Paternity Leave Act (*Elternkarenzurlaubsgesetz*, *Stammfassung*), BGBl No. 651/1989, available at: https://www.ris.bka.gv.at/Dokumente/BgblPdf/1989_651_0/1989_651_0.pdf, accessed 28 February 2014. This Act was reissued and renamed Fathers Parental Leave Act (*Väterkarenzgesetz*, VKG) in 2004.

⁴ *Karenzurlaubserweiterungsgesetz*, *Stammfassung*, BGBl No. 408/1990, available at: https://www.ris.bka.gv.at/Dokumente/BgblPdf/1990_408_0/1990_408_0.pdf, accessed 3 March 2014.

In addition to all other leave provisions, parents of seriously ill children of any age up to eighteen can apply to their employers for an unpaid leave period of up to nine months with a basic protection against dismissal (*Begleitung von schwersterkrankten Kindern*). For children or relatives that require constant care for at least 120 hours per month and are consequently entitled to a Level 3 Care Allowance (*Pflegegeld, Stufe 3*) employees and civil servants can demand an unpaid leave period or a work-time reduction for one to three months (*Pflegekarenz, Pflegezeit*).⁵ Employees taking up these special leave periods are also entitled to a special care leave allowance (*Pflegekarenzgeld*) and remain included in the statutory pension systems.

Except for civil servants fathers are only entitled to parental leave. For federal civil servants and federal contractual public servants (*Bundes-Vertragsbedienstete*) a period of unpaid paternity leave immediately after the birth of the child was introduced in 2011.⁶ Fathers in federal public service are entitled to up to four weeks of unpaid leave immediately following the birth of the child. They have to notify the competent authorities at least one week in advance.⁷ Most state civil service legislation has adopted similar provisions for their public servants.⁸ So far there are no social security benefits for fathers on paternity leave.

2. Implementation of Directive 2010/18

According to the competent Ministry of Work, Social Affairs and Consumer Protection (*Bundesministerium für Arbeit, Soziales und Konsumentenschutz, BMA SK*) Directive 2010/18 required no implementation beyond the measures already taken, as the personal and factual scopes of the existing pieces of legislation covered or even surpassed all requirements even before was adopted.⁹ This assessment focuses on the existing legislation for employed workers.

Under Austrian legislation, on certain conditions it is admissible for employers and employees to agree on atypical or irregular working contracts (*freie Dienstverträge*¹⁰). Workers under these contracts are not covered by the personal scopes of any labour legislation, and consequently neither maternity protection nor any of the parental or family leave provisions are applicable.¹¹

⁵ Work Contract Adaptation Act (*Arbeitsvertragsrechts-Anpassungsgesetz, AVRAG*), Paragraph 14b, available at: <https://www.ris.bka.gv.at/Dokumente/Bundesnormen/NOR40115091/NOR40115091.pdf>; Paragraph 15 available at <https://www.ris.bka.gv.at/Dokumente/Bundesnormen/NOR40153991/NOR40153991.pdf>; and Paragraphs 14c and 14d at: <https://www.ris.bka.gv.at/MarkierteDokumente.wxe?Abfrage=Bundesnormen&Kundmachungsorgan=&Index=&Titel=avrag&Gesetzesnummer=&VonArtikel=&BisArtikel=&VonParagraf=14c&BisParagraf=14d&VonAnlage=&BisAnlage=&Typ=&Kundmachungsnummer=&Unterzeichnungsdatum=&FassungVom=28.04.2014&NormabschnittnummerKombination=Und&ImRisSeit=Undefined&ResultPageSize=100&Suchworte=&WxeFunctionToken=578c516e-f93f-4abb-9d17-4eff2377326>, accessed 10 March 2014.

⁶ In 2012 there were about 264 000 federal public servants, including teachers, about 60 % of whom were male. Information available at: https://www.oeffentlicherdienst.gv.at/moderner_arbeitgeber/personalcontrolling/web_Das_Personal_des_Bundes_2012.pdf?42nor1, accessed 17 March 2014.

⁷ Paragraph 75d Federal Civil Service Act (*Beamtendienstrechtsgesetz, BDG*) and Paragraph 29o Federal Contractual Public Servants Act (*Vertragbedienstetengesetz des Bundes, VBG*) in the version of *BudgetbegleitG 2011*, BGBl I 2010/111, available at: <https://www.ris.bka.gv.at/Dokumente/Bundesnormen/NOR40145319/NOR40145319.pdf> and <https://www.ris.bka.gv.at/Dokumente/Bundesnormen/NOR40145419/NOR40145419.pdf> respectively, both accessed 23 April 2014.

⁸ E.g. Paragraph 53c Civil Service Act for Vienna (*Dienstordnung für Wien, DO Wien*), available at: <http://www.wien.gv.at/recht/landesrecht-wien/landesgesetzblatt/jahrgang/2011/pdf/jg2011022.pdf>, accessed 23 April 2014.

⁹ Personal communication between the Ministry and the expert.

¹⁰ These are irregularly employed workers whose place is between employers and employees. They work for their contract partner who gives them instructions on what to do, but they can mostly decide freely on their working time arrangements and other things. Mostly these contracts are used to reduce costs for the employers and in many cases they are not legally justified. But young professionals enter into them anyway because they considered these contracts as a gateway to regular employment opportunities.

¹¹ See also European Network of Legal Experts in the Field of Gender Equality, N. Bei 'Austria' in: *Fighting Discrimination on the Grounds of Pregnancy, Maternity and Parenthood* pp. 36-37, European Commission

3. Purpose and scope (Clause 1)

The Maternity Protection Act and the Fathers Parental Leave Act are federal laws applicable to workers and employees in the private sector, to federal civil servants, to teachers and to homeworkers under the Home-Work Act (*Heimarbeitsgesetz*). All constitutionally required separate pieces of legislation are to a very large extent modelled on the Maternity Protection and Fathers Leave Acts, and will therefore only be discussed as far as there are pertinent differences.

The personal scope of all parental leave legislation covers everybody who is employed under a private labour contract or in the civil service irrespective of the organisational basis of their employers. Contrary to other areas of labour law for the private sector, parental leave legislation makes no exceptions for board members or senior management. It also includes part-time workers and temporary staff.

Female fixed-term workers are entitled to maternity and to parental leave but not to an extension of the work contract until the end of the leave period. Only in cases where fixed-term contracts of female workers end before the beginning of maternity leave and the expiration date is not justified by objective reasons, a statutory extension up to the starting date of maternity leave is granted.¹² However, fathers with fixed-term contracts are not entitled to an extension of their work contracts in cases where they might want to take parental leave after the maternity and parental leave periods of the mothers have expired.¹³

4. Parental leave (Clause 2)

Under all applicable pieces of legislation for the private and for the public sector parental leave, which is a full-time leave, is limited to the period between the end of maternity leave and the second birthday of the child. Maternity leave is mandatory from eight weeks before the birth date until eight weeks after the actual birth. Where certain medical reasons are certified, maternity leave before birth can begin at an earlier date. It is extended to twelve weeks after the birth in cases of caesarean sections or premature births. Parents can agree to divide parental leave or to defer a part of parental leave to a later period, which shortens the available time periods immediately after maternity leave.

Parental leave is an individual right of each parent, but it can only be taken up by one parent at a time, except for one month of shared parental leave. Parental leave can be divided between parents within the statutory time frame. Parental leave is fully transferable between parents; there is no non-transferable part, so that one parent alone can use the complete parental leave period (usually the mother). The parents have to reach an agreement between themselves on who takes parental leave and on how to divide the statutory leave period, which is between the end of maternity leave and the second birthday of the child.¹⁴

2012, available at: http://ec.europa.eu/justice/gender-equality/files/your_rights/discrimination_pregnancy_maternity_parenthood_final_en.pdf. Workers with *freie Dienstverträge* (in Austrian legal terminology: *arbeitnehmerähnliche Personen*, employee-like persons) are included into the statutory general social security system with a special status and are therefore entitled to health benefits and to maternity benefits. The extent to which employers can rely on the validity of these contracts has mostly been developed by jurisdiction. Employee-like persons can sue for regular employee status at their own risk and cost; in some cases the question of employment status can also be settled with considerably lower cost risks in an administrative procedure concerning social security contributions.

¹² Paragraph 10a Maternity Protection Act, available at: <https://www.ris.bka.gv.at/Dokumente/Bundesnormen/NOR12099217/NOR12099217.pdf>; and Paragraph 5 Fathers Parental Leave Act, available at: <https://www.ris.bka.gv.at/Dokumente/Bundesnormen/NOR40154098/NOR40154098.pdf>, both accessed 1 March 2014.

¹³ See also: European Network of Legal Experts in the Field of Gender Equality, N. Bei 'Austria' in: *Fighting Discrimination on the Grounds of Pregnancy, Maternity and Parenthood* p. 40, European Commission 2012, available at: http://ec.europa.eu/justice/gender-equality/files/your_rights/discrimination_pregnancy_maternity_parenthood_final_en.pdf, accessed 21 March 2014.

¹⁴ There are no procedural rules for settling conflicts over parental leave decisions between parents. As far as can be ascertained there is no case law on parents arguing over parental leave. The author has not been able to even find anecdotal references to such conflicts.

Adoptive parents have the right to parental leave (for details see Section 6. Adoption).

Austrian legislation forbids surrogacy outright: any related contracts or arrangements are legally void.¹⁵ The system only considers the woman who has given birth to a child as mother in the legal sense, and therefore only she would be entitled to maternity protection and to parental leave.¹⁶

5. Modalities of application (Clause 3)

The scope of application of parental leave entitlements is only contingent on the valid conclusion of a labour contract or on accessing public service. There are no waiting periods, no special provisions for small enterprises, and no exception clauses for relaying leave for justifiable causes.

The decision by parents whether to take up full-time parental leave or whether to go back to work does not require any approval by the employer. Under current legislation this depends only on the volition of the parents and the subsequent unilateral notification of the employer within the legal notification periods. The most rigorous requirement in this context is the minimum duration – a period of parental leave must not be shorter than two months, otherwise parents lose the full scope of legal protections. The notification is binding on the employee, who cannot digress from it without consent by the employer, e.g. to voluntarily shorten the leave period. This even applies to cases where the child dies during the parental leave period. If the employer does not consent to the employee's earlier return to the workplace the parent on parental leave has to stay at home; as the family benefits also end, he or she is entitled to unemployment benefits until the end of the leave period.

If parents decide not to take up the full legal duration of parental leave, they still can apply for a parental part-time work arrangement.¹⁷

Mothers can notify their employers of the start and the intended duration of their parental leave immediately following their maternity leave until the end of the mandatory maternity leave period. Except for the mandatory minimum leave period of two months they are free to decide on the duration of their leave period and can take the complete leave period simply by declaration. However, if they declare for a shorter leave period either they themselves or the father has to notify their respective employers up to three months before the end of the previous parental leave period. This is shortened to two months in cases where the other parent only takes the mandatory minimum leave period of two months. Dismissal protection begins with the notification, at the earliest four months before the start of the respective parental leave period and ends four weeks after it expires.

Both parents have the same right to parental leave and the same protections apply. Except for one month, parents cannot take parental leave periods together.

Parents who take up part of their parental leave entitlement before the second birthday of the child are required to announce the commencement of their respective leave periods within the legally defined time frames. Protection against dismissal starts with the employer's receipt of the notification.¹⁸ Only if these deadlines are missed do parents have to reach an agreement

¹⁵ Paragraph 3(3) *Fortpflanzungsmedizingesetz* (Act on Medically Assisted Reproduction), available at: <https://www.ris.bka.gv.at/Dokumente/Bundesnormen/NOR12036050/NOR12036050.pdf>; in conjunction with Paragraph 879 Civil Code (*Allgemeines Bürgerliches Gesetzbuch*), available at: <https://www.ris.bka.gv.at/Dokumente/Bundesnormen/NOR12018602/NOR12018602.pdf>, both accessed 1 March 2014.

¹⁶ Paragraph 143 Civil Code (*Allgemeines bürgerliches Gesetzbuch*), <https://www.ris.bka.gv.at/Dokumente/Bundesnormen/NOR40146730/NOR40146730.pdf>, accessed 1 March 2014. For relevant case law, see Section 12 (below). For the territorial scope of these provisions see Section 12, case law.

¹⁷ More detailed information on parental part-time (*Elternteilzeit*) leave is detailed at the end of this section, and in section 8, *Return to work*.

¹⁸ Protection against dismissal for leave periods is regulated in the Maternity Protection Act (Paragraphs 10 and 12, <https://www.ris.bka.gv.at/MarkierteDokumente.wxe?Abfrage=Bundesnormen&Kundmachungsorgan=&Index=&Titel=mschg&Gesetzesnummer=&VonArtikel=&BisArtikel=&VonParagraf=10&BisParagraf=12&VonAnlage=&BisAnlage=&Typ=&Kundmachungsnummer=&Unterzeichnungsdatum=&FassungVom=28.04.2014&NormabschnittnummerKombination=Und&ImRisSeite=Undefined&ResultPageSize=100&Suchworte=&WxeFunctionToken=926c4558-3692-408c-b2dd-22146f53d8a5>, accessed 1 March 2014) and was extended from there to parental leave for both mothers and

about the beginning and the end of their parental leave periods with their employers; even in these cases they retain all legal rights in connection with parental leave.

Parents can also decide to shorten the leave period by at most three months for each parent and save this for later use at any time until the seventh birthday of the child.

There is no obligation to consume parental leave at all. Parents are free to return to their work-place subsequent to maternity leave or to apply for parental part-time work arrangements instead of or subsequent to a parental leave period.

Full parental leave with all connected rights of the parents is not contingent on the size of the employer's enterprise. Only the provisions for parental part-time work for the private sector (*Elternteilzeit*) differentiate between employees of smaller firms (up to 20 employees) and of larger enterprises (21 and more employees).¹⁹

6. Adoption (Clause 4)

Adoption under Austrian law is open to married heterosexual couples that meet the legal requirements.²⁰

Notification periods are the same as for all other parental leave variants except for the starting date: parental leave is granted under all relevant pieces of legislation as soon as a child is taken into custody with the intention to adopt or as soon as the legally adopted child enters the adoptive parents' household. As in many cases this is the earliest date from which adoptive parents can be certain of the progression of the official procedures, this is also the date required for notification of the employer.

Parental leave starts as soon as the child is taken into custody by the parents and can be taken until the second birthday, or, if the period between these dates is shorter, for at least six months. If the adoptive child is older than two but younger than seven, adoptive parents are entitled to six months of parental leave, which can again be divided between them.²¹

7. Employment rights and non-discrimination (Clause 5)

Every employee under the personal scope of the relevant pieces of legislation is protected against dismissal for the duration of parental leave and for four weeks after it expires. Employers wanting to end the work contract of someone on maternity leave or on parental leave have to seek approval by the Labour and Social Courts prior to actually being able to give notice formally. The courts may only allow the dismissal if one of the legal reasons for termination is proven by the employer. Mandatory dismissal protection starts four months before the start of the respective leave period. Dismissals need prior consent by the labour courts for validity, which can only be given for legally specified reasons. In cases where parents notify their employers before mandatory dismissal protection sets in, no prior labour court consent is required for ending the labour contract. However parents can sue for reinstatement of their work contract or for compensation, especially under the rules of the Equal Treatment Act.²²

fathers. Usually parental leave following the birth is taken by mothers, so the protection is extended until the end of their leave periods.

¹⁹ For more details, see Section 8, Return to Work.

²⁰ Paragraphs 191 to 203 Civil Code (*Allgemeines Bürgerliches Gesetzbuch*), for details see: <https://www.help.gv.at/Portal.Node/hlpd/public/content/72/Seite.720003.html>, accessed 10 March 2014.

²¹ Paragraph 15 c Maternity Protection Act, <https://www.ris.bka.gv.at/Dokumente/Bundesnormen/NOR40154092/NOR40154092.pdf>, accessed 10 March 2014.

²² Paragraphs 10 and 12 Maternity Protection Act, <https://www.ris.bka.gv.at/MarkierteDokumente.wxe?Abfrage=Bundesnormen&Kundmachungsorgan=&Index=&Titel=mschg&Gesetzesnummer=&VonArtikel=&BisArtikel=&VonParagraf=10&BisParagraf=12&VonAnlage=&BisAnlage=&Typ=&Kundmachungsnummer=&Unterzeichnungsdatum=&FassungVom=28.04.2014&NormabschnittnummerKombination=Und&ImRisSeit=Undefined&ResultPageSize=100&Suchworte=&WxeFunctionToken=926c4558-3692-408c-b2dd-22146f53d8a5>, and Paragraph 7 Fathers' Parental Leave Act, <https://www.ris.bka.gv.at/Dokumente/Bundesnormen/NOR40052586/NOR40052586.pdf>, both accessed 7 March 2014.

There are no specific provisions for the protection against less favourable treatment on the grounds of taking parental leave in any of the relevant pieces of parental leave legislation.

The Equal Treatment Act for the Private Sector contains an equal treatment clause that forbids direct and indirect discrimination on the grounds of sex, especially in reference to ‘family status or the case of someone’s having children’; the Equal Treatment Act for Federal Civil Servants (*Bundes-Gleichbehandlungsgesetz*) contains a regulation that expressly forbids to take parental leave periods or other family-related workplace decisions into account for decisions on service advancements.²³

However a complaint based on the provisions of the Equal Treatment Act for the private sector would require that an unfavourable workplace decision in connection with a claimant’s family status also relates to his or her sex. In cases where unfavourable workplace decisions were demonstrably based only on parental leave independent of the worker’s sex, the equal treatment remedies could not be applied.²⁴

The employment contract remains fundamentally valid for the duration of parental leaves. According to legal doctrine and established case law by the labour courts, the main obligations of the work contract, payment of salaries and performance of job-related duties respectively, are suspended as long as the parent is away on parental leave. There are however collateral duties related to the work contract that remain active during periods of paid or unpaid absence from work, such as confidentiality or competition clauses. The breach of these collateral duties during parental leave would constitute admissible grounds for the mandatory consent of the labour courts for termination of the contract during maternity leave or parental leave.

Due to the continued validity of the existing work-contract, parents retain the right to return to the same or an equivalent work-place after parental leave. However, in practice parents who return under parental part-time arrangements are frequently moved to posts that cannot be considered as fully equivalent to their former status. In these cases parents can claim their right to equivalent working conditions only under the provisions of the Equal Treatment Act, as the parental leave provisions do not contain a corresponding clause.

Rights related to or dependent on work contracts are acquired throughout maternity leave until the beginning of parental leave periods and are maintained until return to the workplace. Parental leave periods are generally not taken into account for rights or entitlements dependent on time, such as advancements in collective pay schemes.²⁵

As parental leave does not change the contents of the underlying work contract, returning parents in principle have the right to return to the same job or at least to an equivalent job after parental leave.

Under Austrian social security legislation all time-related mandatory entitlements and benefits, especially concerning statutory pensions and unemployment benefits, are maintained during parental leave periods.

Social security based benefits for parental leave were granted to workers and employees until 2001. In place of the social security based benefits, general family benefits for the raising of small children were introduced in 2002 (Small Children’s Benefit, *Kinderbetreuungsgeld*).²⁶ Every parent who actually cares for a small child within his or her

²³ See: European Network of Legal Experts in the Field of Gender Equality, N. Bei ‘Austria’ in: *Fighting Discrimination on the Grounds of Pregnancy, Maternity and Parenthood* p. 33, European Commission 2012, available at: http://ec.europa.eu/justice/gender-equality/files/your_rights/discrimination_pregnancy_maternity_parenthood_final_en.pdf, accessed 10 March 2014.

²⁴ *Windisch-Graetz*, p. 1829, in: *Zeller Kommentar zum Arbeitsrecht, Band 1, 2. Auflage*.

²⁵ Except the first ten months of parental leave that are factored into the period required for the statutory increase in paid leave entitlements; see also: European Network of Legal Experts in the Field of Gender Equality, N. Bei ‘Austria’ in: *Fighting Discrimination on the Grounds of Pregnancy, Maternity and Parenthood* pp. 33-41, European Commission 2012, available at: http://ec.europa.eu/justice/gender-equality/files/your_rights/discrimination_pregnancy_maternity_parenthood_final_en.pdf, accessed 10 March 2014.

²⁶ Small Children Benefit Act (*Kinderbetreuungsgeldgesetz*, BGBl I 2001/103, <https://www.ris.bka.gv.at/GeltendeFassung/Bundesnormen/20001474/KBGG%2c%20Fassung%20vom%2014.03.2014.pdf>, accessed 14 March 2014. Amount varies according to duration chosen by the parents at application, between EUR 33 for 12 months (plus 2 non-transferable months for the other parent), EUR 26.60 for 15(+3) months, EUR 20.80

regular household and has legal residence in Austria can draw the benefits independent of the employment or social security status prior to or during parental leave. Also the benefits do not depend on the taking of parental leave; parents can continue their occupation but must, in this case, observe an annual income limit. Every parent who actually draws the Small Children Benefit (and is not otherwise included into social security) is covered for benefits in kind by the statutory health insurance for the duration of the benefits. Parents have the right to determine the duration of the benefits by choosing the monthly amount of the benefits.²⁷ As the parental leave periods and the benefits periods can differ and inclusion into health insurance is tied to the benefits or to occupational incomes above the social security threshold, parents can be left without health coverage during unpaid leave periods. In these cases parents in a marriage or acknowledged partnership of at least 10 months standing are covered for benefits in kind by their partner's statutory health insurance (*Mitversicherung*).²⁸

Parents caring for small children are also included into the statutory pension systems up to the fourth birthday of the child or until the birth of a younger child before this time, in which case a new four-year period starts.

Both the health benefits in kind and the pension insurance contributions for parents of small children are paid by internal revenue.²⁹

8. Return to work (Clause 6)

Statutory protection against dismissal extends to four weeks after the respective parent has returned to his or her workplace. As discussed above employers must apply for prior consent for dismissal from the labour courts and wait until the statutory protection period has ended.

Employees on parental leave have the right to be informed of all relevant workplace matters, however there are no sanctions if an employer does not comply.

In 2004 the provisions for parental part-time work (*Elternteilzeit*) in the Maternity Protection Act and the Fathers' Leave Act as well as the relevant provisions for civil servants were extended.³⁰ In the private sector parental part-time work as an 'actionable' entitlement (*Anspruch auf Teilzeitbeschäftigung*) is reserved for employees who have worked in enterprises and organisations with a workforce of 20 or more for at least three years. Employees in smaller enterprises or with shorter durations of employment can negotiate an agreement on parental part-time work (*vereinbarte Teilzeitbeschäftigung*). The earliest possible start of parental part-time work is immediately following maternity leave; it can be taken by both parents consecutively or at the same time until the seventh birthday of the child in cases of larger enterprises or until the fourth birthday in cases of smaller enterprises, but not parallel to a full-time parental leave period of the other parent. Parents are protected

for 20(+4) months and EUR 14.53 for 30 (+6) months; or between EUR 33 and EUR 66 for 12 (+2) months calculated on basis of previous income. See also: European Network of Legal Experts in the Field of Gender Equality, N. Bei 'Austria' in: *Fighting Discrimination on the Grounds of Pregnancy, Maternity and Parenthood* p. 35, European Commission 2012, available at: http://ec.europa.eu/justice/gender-equality/files/your_rights/discrimination_pregnancy_maternity_parenthood_final_en.pdf, accessed 10 March 2014.

²⁷ The system of the small children benefits is quite complicated. One portion of the benefit is reserved for the other parent and is forfeited if not consumed by him or her. Duration depends on the amount chosen by the parents: 30+6 months at EUR 14.53 per day, 20+4 months at EUR 20.80 per day, 15+3 months at EUR 26.60 per day and 12+2 months at EUR 33.00 per day. Additionally parents can choose the income-dependent benefits for 12+2 months with at least EUR 33.00 and at most EUR 66.00 per day according to their eligibility. These benefits do not depend on full-time parental leave, but if parents work they have to observe an annual income limit.

²⁸ Paragraph 123 General Social Security Act (*Allgemeines Sozialversicherungsgesetz, ASVG*), <https://www.ris.bka.gv.at/Dokumente/Bundesnormen/NOR40154296/NOR40154296.pdf>, accessed 23 March 2014.

²⁹ European Network of Legal Experts in the Field of Gender Equality, N. Bei 'Austria' in: *Fighting Discrimination on the Grounds of Pregnancy, Maternity and Parenthood* pp. 37-39, European Commission 2012, available at: http://ec.europa.eu/justice/gender-equality/files/your_rights/discrimination_pregnancy_maternity_parenthood_final_en.pdf, accessed 10 March 2014.

³⁰ All other relevant pieces of legislation were amended accordingly before the beginning of 2005, so that almost every employed person irrespective of their legal status has rights under this model.

against dismissal under the same rules as during parental leave until the fourth birthday of the child, for later periods they have a basic protection against dismissal based on the grounds of taking parental part-time work periods. This would enable them to sue their employers for reinstatement if they can prove that the parental part-time period was essential for the dismissal.³¹

Under these rules parents can apply to the employer to change their working hours as well as the daily or weekly beginning and end of their working time (e.g. to change shift work arrangements). They are required to include a written detailed proposal containing the weekly number of working hours and the daily beginning and end of work, and the starting and end dates of the part-time working period. In organisations and enterprises with 20 or more employees, the employer who does not want these proposals to become effective has to present a different proposal and to start a special court action in order to negotiate a compromise under which the employer's proposal can be taken into account. If no compromise can be reached, the employer has to sue the employee and the compromise is substituted by a court ruling.³²

9. Time off from work on grounds of force majeure (Clause 7)

There are two provisions in labour legislation concerning force majeure leave for employed parents; both also cover adoptive parents.

Paragraph 16 of the Paid Leave Act provides for short-term care for sick children in cases where the primary carer is suddenly unavailable (short-term care leave; *Pflegefreistellung*). In addition to the regular annual paid holidays of at least five working weeks, employees have the right to paid leave for two more weeks in cases where the care of a sick child under twelve is necessary or during the child's admission to a hospital. It was recently extended to same-sex partners and to step-parents irrespective of their marital status. The claim is reduced to one week for children between twelve and eighteen and for grown-up relatives. Short-term care leave can be taken as a whole or on a daily basis.³³

If the parent who is on parental leave and who takes care of the child on a regular basis is unavailable for a longer period, the other parent can have the remaining parental leave period (*Verhinderungskarenz*) transferred to him or her. The absence of the regular carer has to be inevitable and unforeseeable; according to the relevant pieces of legislation this requires the death or long-time hospitalisation of the primary carer, his or her absence during a prison term or the termination of the joint household of child and primary carer for other important reasons.

If the absent parent was still drawing the Small Children Benefit (*Kinderbetreuungsgeld*) at the time of the termination of the common household, the other parent can apply for the remaining benefits to be transferred to him or her.³⁴

10. Final provisions (Clause 8)

The parental leave legislation was compatible with the requirements of the first Parental Leave Directive 96/34/EC and went beyond this in many respects. Almost all of the requirements of the current Directive 2010/18 have been met and exceeded. However, a closer look shows there still are some deficiencies.

³¹ Reversal of the burden of proof was only enacted in equal treatment legislation. In reality these court cases mostly result in a court-ordered mutual consent to end the contract in exchange for a lump-sum compensation.

³² Paragraphs 15h to 15j Maternity Protection Act, <http://tinyurl.com/khme5pl>, and Paragraphs 8 to 8c Fathers' Parental Leave Act, <http://tinyurl.com/mdav4wc>, accessed 23 March 2014.

³³ Paragraph 16 Paid Leave Act (*Urlaubsgesetz, UrlG*), available at: <https://www.ris.bka.gv.at/Dokumente/Bundesnormen/NOR40144616/NOR40144616.pdf>, accessed 23 March 2014.

³⁴ Paragraph 15d Maternity Protection Act; and Paragraph 6 Fathers Leave Act, available at: <https://www.ris.bka.gv.at/Dokumente/Bundesnormen/NOR40154093/NOR40154093.pdf> and <https://www.ris.bka.gv.at/Dokumente/Bundesnormen/NOR40154099/NOR40154099.pdf> respectively, both accessed 23 March 2014.

Considering the aim of Directive 2010/18 as set out in general consideration No. 10 the exclusion of atypical workers with irregular working contracts (*freie Dienstverträge*) from statutory parental leave provisions can arguably be seen as deficient implementation of Clause 1.

Clause 2 No. 3 of Directive 2010/18 expressly states that part of the parental leave period should be non-transferable. Under Austrian legislation one parent alone can use the whole leave period; in cases where parents disagree on the division of leave periods there are no legal procedures to reach a decision or compromise.

As has been discussed above statutory health insurance is not associated to parental leave but depends on drawing the Small Children's Benefit. It has become quite common to draw the income-related benefit model that is granted until the first birthday of the child for one parent while the same parent, usually the mother, extends parental leave until the second birthday of the child, which leaves her without an independent health insurance. However, this system has the great advantage of including every benefit recipient into the statutory health insurance irrespective of their previous social security coverage and their parental leave entitlements.

It has to be underlined that the pieces of parental leave legislation do not contain any specific provisions on direct or indirect discrimination on the grounds of family-related workplace decisions. Remedies and sanctions against gender-related discrimination are limited to equal treatment legislation. As has been discussed above, workers dismissed on grounds related to parental leaves or parental part-time work can try to sue for re-instatement of the work contract or for compensation under equal treatment legislation, in which cases they would have to demonstrate that the unfavourable workplace decision was at least partly based on their sex.

11. Sanctions (Article 2)

Employees who are dismissed in violation of the protection provisions can either insist on the continuation of their work contract or accept the termination of the contract and claim compensation. The compensation is calculated according to general compensatory rules according to the sum of the average pre-tax monthly earnings for the duration of the regular cancellation period as defined by law or collective agreement plus the period under dismissal protection after the end of parental leave.

Breach of the statutory maternity leave provisions is burdened with administrative fines, which however is of no practical importance.

12. Case Law

In labour law and social law court cases there have been only few new developments since the publication of the report *Fighting Discrimination on the Grounds of Pregnancy, Maternity and Parenthood* in 2012.³⁵

The Supreme Court has submitted questions to the CJEU concerning the calculation of a pay element related to child support in cases of part-time work and of parental part-time work based on Paragraph 4 No. 2 of the Part Time Directive 97/81/EC.³⁶

Parental leave and surrogacy

In 2012 the Constitutional Court issued a ruling that limits the scope of the national ban on surrogate motherhood.³⁷ Under Austrian law it is not forbidden for prospective parents to

³⁵ European Network of Legal Experts in the Field of Gender Equality, N. Bei 'Austria' in: *Fighting Discrimination on the Grounds of Pregnancy, Maternity and Parenthood* pp. 33-41, European Commission 2012, available at: http://ec.europa.eu/justice/gender-equality/files/your_rights/discrimination_pregnancy_maternity_parenthood_final_en.pdf, accessed 10 March 2014.

³⁶ Case C-476/12 *Österreichischer Gewerkschaftsbund v. Verband österreichischer Banken und Bankiers* Opinion of Advocate General Sharpston of 13 February 2014, available at: <http://tinyurl.com/obmkdbn>, accessed 23 April 2014.

leave Austria and to have a child by a surrogate mother in a country where surrogacy is legal. In this court case the biological twin children of a married couple with Austrian citizenship born by a Ukrainian surrogate mother were denied Austrian citizenship on the grounds that according to Paragraph 6 of the Act on International Civil Rights (*Internationales Privatrechtsgesetz*, IPRG) the Austrian *ordre public* encompasses the ban on surrogacy and therefore constitutes a legal obstacle to recognising citizenship.³⁸ Legal parenthood of the Austrian biological parents was documented by the birth certificates issued in accordance with Ukrainian law, therefore the Ukrainian personality statute was applicable to the civil rights statute of the children. The Constitutional Court ruled that the ban on surrogacy cannot be considered part of the Austrian *ordre public*. As surrogacy is obviously part of other countries' legal systems and because legal parenthood of the biological parents was validated by public documents issued by the competent authorities, the compulsory exclusion of such documents from legal recognition by Austrian authorities based on national legislation would contravene the children's welfare as well as constitutional and international commitments, most importantly the children's right to recognition of family and private life according to Article 8 ECHR.³⁹ Therefore children born by surrogate mothers to Austrian biological parents in a country where surrogacy is legal, have to be recognised as legal children of the biological parents by Austrian authorities. The case in question extended only to the children's citizenship. But the underlying arguments would have to be applied to further questions concerning e.g. statutory parental entitlements. There would be no sufficient legal basis for excluding Austrian biological parents whose parenthood is legally acknowledged by the country where the surrogate pregnancy and birth took place from their entitlements under Austrian law.

13. Practice and other relevant issues

Parental leave immediately following maternity leave is generally taken up by young mothers. Employed mothers returning to work directly after maternity leave or even before the first birthday are an exception. There are hardly any crèches that are ready to take care of toddlers under one and not enough nursery school places for all children from the age of two onward.

Austria has a well-developed legal regime covering leaves for family reasons. In reality there is some societal pressure on young mothers to stay at home as long as (economically) possible and to work part-time after re-entering the labour market, thereby also relieving public institutions such as pre-schools and schools.⁴⁰ The lack of affordable day-care and the problematic time regime of primary and secondary schools re-enforce traditional gender roles and present large obstacles to re-entering full-time employment after parental leave. Only 38 % of women who had taken parental leave in the private sector effectively re-entered the labour market at the end of their statutory parental leave period. On the whole these are mothers who were well integrated into the labour market prior to taking parental leave. At the child's third birthday, this number has risen to 63 %. Income statistics show a significant wage gap for women after parental leave. This is most probably due to increased part-time

³⁷ Constitutional Court (*Verfassungsgerichtshof*, VfGH), 11.10.2012, B 99/12 ua, available at: https://www.ris.bka.gv.at/Dokumente/Vfgh/JFR_09878989_12B00099_01/JFR_09878989_12B00099_01.pdf, accessed 12 March 2014.

³⁸ International Civil Rights Act (*Internationales Privatrechtsgesetz*, IPRG) available at: <https://www.ris.bka.gv.at/GeltendeFassung/Bundesnormen/10002426/IPRG%2c%20Fassung%20vom%2012.03.2014.pdf>, accessed 23 April 2014.

³⁹ For Austria the ECHR is both an international treaty and national constitutional law according to BVG BGBl. No. 59/1964, available at: https://www.ris.bka.gv.at/Dokumente/BgblPdf/1964_59_0/1964_59_0.pdf, accessed 16 March 2014.

⁴⁰ All primary and most secondary public schools are still half-day schools that offer no school lunches or afternoon support. While day-care institutions for pre-school children are closed for four to six weeks during the summer, Austrian schools are closed for more than three months every year.

work.⁴¹ Involvement of fathers is increasing but rarely exceeds leave periods of more than the requisite minimum duration of two months.

BELGIUM – Jean Jacquain

1. Context

It should first be stressed that in Belgium, the notion ‘leaves aimed at facilitating the reconciliation of work and family life’ usually reflects a result, not a purpose. Indeed, most of the leaves that can be mentioned under such a heading were introduced separately and without any coherent vision regarding reconciliation.

Maternity leave has a duration of fifteen weeks (with possible additional weeks in certain circumstances such as multiple pregnancy) ten of which are compulsory (one before the expected delivery date and nine as postnatal leave) and five are optional (i.e. the employee may use them as antenatal or as postnatal leave).

Paternity leave is a phrase that covers two completely different situations. The first one concerns the transfer of the unused maternity leave to the person (male or female) who is the spouse/registered partner/common-law partner of the mother when the latter deceases after giving birth, or when she is unfit to leave the hospital at the same time as the baby (in this case, two maternity leaves are in fact granted). The second one, available to the same person, has a duration of ten days, usable in one go or separately until the child is four months old.

Parental leave is available on identical conditions after the birth or the adoption of a child, for every child under twelve or under 21 if she/he is disabled. The leave is available to any employee (and to each member of a couple of parents without any possibility of transfer). It has a duration of four months full time but can be used in fractions of one-half or one-fifth. There is also an older parental leave scheme, with the same personal scope, still in existence in theory but quite obsolete in practice, as its duration remains limited to three months.

Adoption leave is available to any employee (and to each of the parents for adopting couples); the child must be under ten and the duration of the leave is six weeks if the child is under three, and four weeks if she/he is over 3 (each of these durations is doubled if the child is disabled).

Care leave is organised in very different ways. On the one hand, in the private sector, any employee is entitled to unpaid *force majeure* leave of up to ten days per year: this may be used in various circumstances, e.g. a fire in the employee’s house as well as the sickness of a family member. In the public sector, a four-day paid leave is available in case of sickness of a close relative. On the other hand, the necessity of caring for a seriously ill family member is met in a much more comprehensive way as a special scheme within the general career break scheme (public sector) or time credits scheme (private sector). Under these special schemes, an employee is entitled to leaves of at least one month, which may add up to 24 months in the total career.

Childcare leave comes under the latter scheme, with some notable adaptations, e.g. the maximum duration may add up to 48 months in the total career when an employee attends to a seriously ill child under sixteen; and the minimum duration of one month may be reduced to one week when a sick or injured child must be rushed to hospital.

As mentioned above, all these various leaves are unrelated, although they may be dealt with by different provisions of the same pieces of legislation. However, the persisting lack of balance in the sharing of family tasks and responsibilities often forces female employees to use various leaves consecutively, thus strengthening stereotyped reactions among employers and inevitably contributing to the case law of unlawful dismissal.

⁴¹ The figures and the analysis are taken from a study that looked at the labour-market developments after parental leave for employees in the private sector from 2006 to 2010 (*Wiedereinstiegsmonitoring, Ein Überblick über die Ergebnisse der Kohorten 2006 bis 2010*), available at: http://media.arbeiterkammer.at/PDF/Studie_Wiedereinstiegsmonitoring.pdf, accessed 21 March 2014.

One way of looking at the Belgian motley collection of reconciliation leaves is the following. On the one hand, maternity leave, the longest-existing type of leave, grants an entitlement either to decent social security benefits (equal to 100 % of the net remuneration during the first month and 75 % during the remainder of the leave) in the private sector, or to normal pay for tenured staff members in the public sector. Based on this pattern, the paternity and adoption leaves were granted later on, mainly because of these modest respective durations. On the other hand, the career break/time credits scheme, which could reach up to five years full time in the total career (until it was drastically limited for budgetary reasons), was supposed to offer employees a solution to any longer-term reconciliation needs (although the scheme could also be used for quite different purposes, e.g. further education or long-distance travel), but the scheme only granted entitlement to very modest social security benefits. Parental leave, which had to be introduced in compliance with Directive 96/34/EC,⁴² fell somewhere in between. As employers were opposed to making this a paid leave, and completely unpaid leave could hardly be a viable solution, the formula of a special scheme within the career break/time credits scheme imposed itself, with a hefty increase of the amount of social security benefits as an incitement (aimed mainly at fathers) to make use of the leave.

2. Implementation of Directive 2010/18

It is impossible to explain how Directive 2010/18/EU was implemented without first explaining what was done to implement Directive 96/34/EC.

The Financial Stabilisation Act of 22 January 1985 (Articles 99 through 107) provides the statutory basis for all career break/time credits schemes. In the private sector (and for all staff members employed by local councils), parental leave was introduced, as a special career break scheme, by the Royal Decree (RD) of 29 October 1997. Similar provisions then had to be inserted in the numerous sets of regulations applicable to the different authorities: for instance, in the federal Administration, when a new RD of 19 November 1998 reorganised the various leaves and furloughs, provisions concerning parental leave were included (Article 35). Curiously, in the private sector, the social partners had pre-empted the RD of 29 October 1997 when on 29 April 1997 they concluded Collective Agreement (CA) no. 64 in the National Labour Council;⁴³ this CA (later made generally binding by the RD of 29 October 1997) also provided the same parental leave as the RD, but granted no entitlement to social security benefits. In the public sector, most authorities already provided a primitive parental leave (resulting from the gender-neutral transformation of an ancient ‘breastfeeding leave’), which was allowed to subsist alongside the ‘new’ parental leave mentioned above (e.g., Article 34 of RD of 19 November 1998).

Consequently, the implementation of Directive 2010/18/EU only required amendments to the existing regulations (essentially to lengthen the leave from three to four months and to give effect to Clause 6(1) of the Framework Agreement; see below in Section 8). This was done in the private sector by the RD of 31 May 2012⁴⁴ amending the RD of 29 October 1997, and in the public sector by the RD of 20 July 2012⁴⁵ amending various sets of regulations.

As to CA no. 64 and the ‘old’ provisions in the public sector, they were left unamended and thus can no longer be regarded as valid instruments of implementation of the Directive.

No tables of correlation between the Directive and the RDs of 31 May and 20 July 2012 have been published.

⁴² Council Directive 96/34/EC of 3 June 1996 on the Framework Agreement on parental leave concluded by UNICE, CEEP and the ETUC OJ L 145 of 19 June 1996, pp. 4-9.

⁴³ Available at: www.cnt-nar.be, accessed 27 March 2014.

⁴⁴ *Moniteur belge/Belgisch Staatsblad*, 1 July 2012 (2nd ed.); available (as well as all legal sources quoted) in French and Dutch via www.juridat.be, accessed 27 March 2014.

⁴⁵ *Moniteur belge/Belgisch Staatsblad*, 1 August 2012; available at: www.juridat.be, accessed 27 March 2014.

3. Purpose and scope (Clause 1)

As mentioned above, implementation of the Directive was performed by means of different instruments.

In the private sector, parental leave is available for all workers irrespective of the nature and duration of the employment relationship (full-time/part-time; indefinite/fixed-term). Employment relationships with a temporary agency are not excluded.

In the public sector, every set of regulations mentioned above provides a right to parental leave for any staff member, irrespective of rank (i.e. including top managers). However, because of the multiplicity of regulations, it may turn out that such and such institution or category of personnel is not included in the scope of any of them: for instance, it was discovered quite recently that the situation of ‘Bozar’ (the Palace of Fine Arts in Brussels, a federal public body) is unclear concerning parental leave. As to the judiciary (judges or public prosecutors), the Judicial Code contains no provisions in this respect.

4. Parental leave (Clause 2)

The duration of full-time parental leave is four months, both in the private and the public sectors, since the existing regulations were amended in compliance with Directive 2010/18/EU (see above). However, it should be noted that, while the deadline set in Article 3(2) of the Directive was 8 March 2012, both the RD of 31 May 2012 and the RD of 20 July 2012 came into force on the day of their publication (1 June and 1 August respectively), without any retroactive effect.

The child’s maximum age is twelve, or 21 if she/he is disabled. There is no difference between biological and adopted children. An employee is entitled to parental leave for each of her/his children. The right to parental leave is individual for each of the parents, and no part of the leave is transferable from one parent to the other.

So far, surrogacy as a commercial practice is a penal offence in Belgium; otherwise, it is ignored by legislation.

5. Modalities of application (Clause 3)

Parental leave may be used in the following forms: full-time (four months), half-time (eight months) or one-fifth (twenty months). Once the leave has begun, the employee may shift from one form to another (thus, for instance: two months full-time and four months half-time). The leave may also be broken down into periods of one month (full-time), two months (half-time) or five months (one-fifth), or a multiple of each of these lengths. The employee is entirely free to choose between these various options.

In the private sector (RD of 29 October 1997), written notice, given at least two and at most three months before the date when the leave must begin, is required; the same applies when the employee wishes to change the form of the leave, or to take a new period after returning from a previous period of leave. There are no similar requirements in the public sector.

In the private sector, to be entitled to leave an employee must have been occupied under an employment contract with the same employer during twelve months in the fifteen-month period which preceded the notice. There is no such requirement in the public sector.

A succession of fixed-term contracts with the same employer (insofar as it has not resulted in a contract of indefinite duration) is certainly taken into account for the calculation of the required period of occupation.

In the private sector, within one month after receiving notice, the employer may invoke reasons related to business needs to postpone the leave by six months. Such reasons must be ‘justifiable’, which seems to mean that the employer must be able to demonstrate that they are genuine. This faculty of postponement is available to all employers, regardless of the size of the business. There is no such provision in the public sector.

Moreover, under Article 149 of the Social Penal Code, denying an employee the right to career break/time credits, thus to parental leave as well, is an offence liable to a fine of EUR 300 to EUR 3 000.

The only special rule concerning a disabled child has been mentioned above: parental leave is available until she/he reaches the age of 21 instead of twelve. As to children suffering a long-term illness, it is the special scheme within the career break/time credits scheme, mentioned above in 1, which may be used.

6. Adoption (Clause 4)

Provisions are identical for biological and adopted children, except that in the first case, the right to parental leave takes effect on the date of birth, and in the second case it takes effect on the date of the child's registration as a member of the employee's household.

7. Employment rights and non-discrimination (Clause 5)

Under Article 101 of the Financial Stabilisation Act of 22 January 1985, an employee who makes use of parental leave may only be dismissed on serious grounds or on grounds which (in case of litigation) the Labour Court accepts as sufficient, i.e. unrelated to the leave; the employer carries the burden of proof. Protection against dismissal is applicable as from the date when the employer receives notice until three months after the end of the leave (or of the last fraction of the leave). Fixed damages equal to six months' remuneration are due in case of unlawful dismissal. These provisions are applicable to employees under employment contracts in the private and the public sector. They are not applicable to tenured staff members in the public sector, but given the rules under which such an appointment may be terminated, dismissal related to parental leave is impossible.

There are no statutory provisions concerning either return to the same job or acquired rights in the private sector. Although the expert is not aware of any case law concerning acquired rights, it is quite possible that certain collective agreements concerning entitlement to Christmas bonuses, for example, do not take absences due to parental leave into account for the calculation of the required period of occupation, but the huge number of CAs prevents any attempt to verify this hypothesis. As to the right to return to the same job, the only case worth mentioning concerned an employee who had left the enterprise because the employer was only willing to provide her with an inferior position after four years' time credits under the general scheme; the court decided that such position was not suitable, so that the employee was entitled to unemployment benefits.⁴⁶

The situation is sounder in the public sector, where tenured staff members who make use of parental leave are considered in active service and thus retain their positions and acquired rights. The same favourable treatment is usually extended to staff members under employment contracts (e.g. in the federal Administration, parental leave as governed by Article 35 of the RD of 19 November 1998 was made applicable to contractual staff members by the Royal Decree of 4 June 1999).

Under Articles 100 and 102 of the Financial Stabilisation Act of 22 January 1985, execution of the employment contract is fully or partially suspended during parental leave. As mentioned above, a staff member in the public sector is considered in active service during the leave.

The entitlements to all social security benefits, including healthcare and retirement pensions, are unaffected by parental leave, although no contributions are paid. The same applies to the pension scheme for tenured staff members in the public sector.

No remuneration is paid by the employer during parental leave, either in the private or in the public sector.

⁴⁶ Labour Court of Appeal in Brussels, judgment of 3 September 2013, *Journal des tribunaux du travail*, 2014, p. 94.

Social security benefits are granted during parental leave; for historical reasons, they are provided by the Unemployment Insurance Scheme. For both sectors, the gross monthly amounts are (since 1 December 2012) EUR 786.78 for a full-time leave; for half-time leave, EUR 393.38 or EUR 667.27 according to the age of the employee (under or over 50); for a one-fifth leave, EUR 133.45 (EUR 179.47 for a single parent) or EUR 266.91 (under or over 50).

It must be reported that, for disputable budgetary reasons, benefits related to the fourth month of parental leave are only paid if the child's birth or adoption was not before 8 March 2012, i.e. the deadline for implementation of Directive 2010/18. Considering that parental leave is available until the child is twelve (21 if disabled), and that the leave may be fractioned into months, such a restriction results in discrimination between employees according to the dates of their children's birth or adoption, as the fourth month is available to all, but with or without benefit. One may question whether different treatment of employees who are essentially in the same situation complies with the intentions pursued by the Framework Agreement (see Clause 1(2)).

However, the necessary amendments were introduced in the social security legislation so that entitlement to coverage is maintained even when an employee makes use of the fourth month of parental leave without being entitled to the benefit.

8. Return to work (Clause 6)

Clause 6(1) was simply copied out as Article 7/1 of the RD of 29 October 1997, inserted by the RD of 31 May 2012. The maximum period of time during which working hours and patterns may be adapted is six months. The application for adaptation, stating the employee's needs of reconciliation, must be submitted in writing at least three months before the end of the leave; the employer must give a written answer at least one week before the end of the leave, explaining how the enterprise's and the employee's respective needs are taken into account.

In the public sector, the RD of 20 July 2012 inserted a similar provision (as Article 35*bis*) in the RD of 19 November 1998, which only applies to staff members of the federal Administration. As to personnel employed by other authorities, implementation of Clause 6(1) does not seem to have been achieved yet.

Moreover, the amendments mentioned above were adopted in hurried and cosmetic deference to Directive 2010/18, but it remains to be seen how these new provisions can be used effectively, especially in the federal Administration.

As to Clause 6(2), it has not been implemented by any statutory provision.

9. Time off from work on grounds of force majeure (Clause 7)

As mentioned above in 1, time off on grounds of *force majeure* is provided distinctly from the parental leave scheme. In the private sector, Collective Agreement no. 45, concluded in the National Labour Council on 18 December 1989⁴⁷ entitled any employee to up to ten days' leave per year, under serious circumstances which are not necessarily related to childcare. The leave is unpaid and gives no right to social security benefits, but entitlement to social security cover is maintained. Given that there are employees who do not fall within the scope of CA no. 45 (essentially, contractual staff members in the public sector), Article 30*bis* of the Employment Contracts Act of 3 July 1978 and its ancillary RD of 11 October 1991, also provided the same leave under the same conditions.

In the public sector, regulations applicable to tenured staff members usually provide the right to *force majeure* leave, in case of sickness or accident affecting a close relative (e.g. the spouse as well as a child). The leave usually has a maximum of four days per year, during which the staff member is considered to be in active service and entitled to remuneration (e.g., in the RD of 19 November 1998, Article 20).

⁴⁷ Available at www.cnt-nar.be, accessed 27 March 2014.

The only recent provisions which may be regarded as implementing Clause 7 concern the case of a sick or injured child who must be rushed to hospital. The special career break/time credits scheme aimed at caring for a seriously ill relative (RD of 10 August 1998 and, in the public sector, various sets of regulations) includes several restrictions: the employee must give seven days' notice, the employer may object to the leave (in small businesses) or postpone it on organisational grounds (in any business), and the minimum duration of the leave must be one month. In order to make this leave usable under the emergency circumstances mentioned above, a Royal Decree of 10 October 2012⁴⁸ amended the RD of 10 August 1998 so that the leave may take effect immediately, the employer may neither object to it nor postpone it and the minimum duration of the leave is one week with an optional second week.

The RD of 10 October 2012 contained no reference to Directive 2010/18, but when a Royal Decree of 12 July 2013⁴⁹ amended the various regulations applicable in the public sector to the same effect, a reference to the Directive was included in its recital.

10. Final provisions (Clause 8)

As mentioned in Section 8, Clause 6(2) has not been implemented in any statutory provisions. Given its very vague wording, implementation is probably best left to social dialogue in individual enterprises, but such a method is not applicable as such in public services which must be governed by statutory rules, after negotiation with the trade unions. Excessive delay in the adoption of the necessary measures is the obvious reason for the omission.

As mentioned in Section 7, the failure to implement Clause 5 concerning the right to return to the same job is probably not very serious given the modest duration of full-time parental leave, but the same cannot be said concerning acquired rights (see the example about Christmas bonuses). Indeed, the same omission appears in the implementation of Articles 15 and 16 of Directive 2006/54/EC⁵⁰ (concerning maternity, paternity and adoption leaves) and seems to result from perplexity among the competent authorities as to the proper legislative technique to be used in order to achieve effective implementation.

Referring to the CJEU's decision in *Khatzi*,⁵¹ the expert can report that according to interpretations provided by the federal Ministries of Employment and of Civil Service, parental leave and the related social security benefits are unquestionably available in respect of each child in case of multiple births or multiple adoptions.⁵²

11. Sanctions (Article 2)

Sanctions were explained in Section 7 of this report. As to protection against dismissal, fixed damages equal to six months' remuneration is a standard in Belgian labour law. The effectiveness of such a standard is doubtful, both as a deterrent and as to proportionality. However, the case law concerning dismissal grounded on parental leave is not extensive (perhaps 30 reported cases in fifteen years), as compared with the case law related to maternity (certainly 50 reported cases each year); unfortunately, this simple sociological observation has not been explained by any investigation of causes so far.

The expert is unaware of any case law concerning the penal offence of obstructing an employee's right to parental leave. However, decisions of penal courts related to labour law are reported very seldom.

⁴⁸ *Moniteur belge/Belgisch Staatsblad*, 22 October 2012.

⁴⁹ *Moniteur belge/Belgisch Staatsblad*, 19 July 2013.

⁵⁰ Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) OJ L 204 of 26 July 2006, pp. 23-36.

⁵¹ Case C-149/10 *Zoi Chatzi v Ypourgos Oikonomikon* [2010] ECR-I-8489.

⁵² See J. Jacqmain's case notes on *Khatzi*, *Chroniques de droit social*, 2012, p. 274.

12. Case law

The main issue related to parental leave which has been bitterly disputed in courts concerned which remuneration (full or reduced) had to be taken into consideration in case of dismissal during or immediately after part-time leave. Given the obstinate case law of the Court of Cassation and Constitutional Court, according to which payment in lieu of a notice period must be based on the reduced remuneration in all situations of temporary reduction of an employee's working time, e.g. part-time career break/time credits, the same interpretation was applied to part-time parental leave by most labour courts. Finally, after the Court of Cassation was forced to refer to the CJEU and the latter ruled on *Meerts*,⁵³ Article 105 of the Financial Stabilisation Act of 22 January 1985 was hastily amended (by the Act of 30 December 2009) to provide that payment in lieu of a notice period was to be based on the full remuneration, but only in case of part-time parental leave.

However, this amendment did not apply to the fixed damages which are due in case of unlawful dismissal (Article 101 of the Act of 22 January 1985: see above in Section 7). Consequently, in another case the Labour Court of Appeal in Antwerp also referred to the CJEU, which in *Rogiers*⁵⁴ logically followed the same reasoning as in *Meerts*. Indeed, when delivering the final decision in the *Meerts* case, the Labour Court of Appeal in Brussels had already reached the same conclusion.⁵⁵

13. Practice and other relevant issues

Statistics from the Healthcare and Sickness Insurance Office⁵⁶ reveal a steady growth in the use of paternity leave (from 50 000 in 2007 to 60 000 in 2011). By way of reference: in 2011 about 72 000 female employees took maternity leave. There is also a growth in the use of adoption leave, but given the enormous practical and administrative difficulties entailed in an adoption process, the (unsegregated) figures are insignificant (from 300 to 400 in 2011). The above figures do not include tenured staff members in the public services.

Concerning parental leave, the Unemployment Insurance Office has produced quite a comprehensive report,⁵⁷ which reveals a steady growth in the use of the leave, but also a persisting gender imbalance. In 2012, for the whole country and in both the private and the public sector, 14.3 men in 1 000 and 49.3 women in 1 000 used parental leave. As to the different forms of the leave, the gender segregation was the following: full-time 82.3 % women and 17.7 % men; half-time, 84.9 % women and 15.1 % men; one-fifth, 66.9 % women and 33.1 % men.

The only measure which can be identified as aimed at encouraging men to use parental leave was the amount of the social security benefits, which is definitely higher (by as much as 50 %) than the amounts in case of career break/time credits under the general scheme.

Obviously, even these increased benefits are no adequate compensation for the loss of remuneration entailed by parental leave. However, in the present general context of budget restrictions no pressure for a more favourable treatment seems to be exerted.

⁵³ Case C-116/08 *Christel Meerts v Proost NV* [2009] ECR-I-1063.

⁵⁴ Case C-588/12 *Lyreco Belgium NV v Sophie Rogiers* [2014] n.y.r.

⁵⁵ Judgment of 9 November 2012, *Algemene rol* no. 2011/AB/648, unreported, available in Dutch on www.juridat.be, accessed 27 March 2014.

⁵⁶ INAMI, *Rapport annuel* 2012, available at www.inami.fgov.be, accessed 27 March 2014.

⁵⁷ ONEm, *Congé parental – Évolution de la répartition homme/femme*, from 2002 to 2012, available at www.rva.be, accessed 27 March 2014.

BULGARIA – Genoveva Tisheva**1. Context**

The main features of the leaves available in Bulgaria for raising a child are explained in detail later in this report. Bulgaria has the following types of leave: maternity, childbirth and adoption leave (paid leaves); leave for raising a child up to the age of two (paid leave); leave for raising a child until the age of eight (unpaid leave); and special leaves for adoptive parents (paid).

Parental leave is not defined explicitly as a separate category of leave by law. The concept of parental leave as defined in the Directive, *stricto sensu*, is closest to the unpaid leave for raising a child up to the age of eight. The other types of leaves ensured for both parents and described below are also considered more generally as parental leaves. There is also a special paternity leave of fifteen days after the birth of the child (Article 163 Paragraph 7 of the Labour Code).

The rights of adoptive parents until the child reaches the age of two do not differ from those of other parents. Since the beginning of 2014, adoptive parents have additional opportunities to raise a child adopted between the ages of two and five. This concerns a paid leave which is meant to facilitate the situation and adaptation of the child and the parents.

Bulgarian legislation is in compliance with the Pregnancy Directive⁵⁸ and the Parental Leave Directive and goes beyond some of the minimum standards included there.

2. Implementation of Directive 2010/18

Bulgarian legislation was already in compliance with the principles enshrined in Directive 2010/18 prior to the adoption of the Directive. Modalities of application of the parental leave beyond the minimum standards were defined also after that time. Harmonisation of Bulgarian law with the Parental Leave Directive was made possible mainly by amendments to the Labour Code (LC),⁵⁹ and also to the Protection against Discrimination Act⁶⁰ (PADA).

The main features of parental leave, and parental leave in the context of related leaves, are as follows:

- Female employees are entitled to pregnancy and childbirth leave of 410 days for each child, 45 days of which must be used before giving birth (Article 163 LC). A female employee who adopts a child is entitled to a leave equal to the difference between the child's age when it was given up for adoption and the expiration of the period of the maternity leave, with reference to the period of maternity leave of a biological mother. With consent of the mother/adopter, after the child is six months old, the father/adopter may use the remaining paid leave up to 410 days, and the paid leave of the mother is interrupted. For the time of this leave, the respective parent employee shall be paid a cash compensation under terms and in amounts specified by the Social Insurance Code. – Since 2009, if the parents are married or live together in cohabitation, the father is entitled to fifteen days of paid paternity leave at the birth of his child, after the child is brought home from the hospital (Article 163 LC). In all cases, both when the child is born and adopted, fathers have the same social insurance rights for this paternity leave, also when they replace the mother after the child is six months old (this is applicable in all cases after the child reaches the age of six months).

⁵⁸ Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) OJ L 348 of 28 November 1992, pp. 1-8.

⁵⁹ Labour Code, SG No. 26/86, in force since 1 January 1987, last amended by S.G. No. 27/2014, Bulgarian version available at: <http://www.lex.bg/bg/laws/ldoc/1594373121>. The main amendments for harmonisation with the Parental Leave Directive were made by S.G. No. 7/2012.

⁶⁰ Protection against Discrimination Act, SG 86/2003, in force since 1 January 2004, last amended by SG 68/2013, Bulgarian version available at: <http://lex.bg/laws/ldoc/2135472223>, accessed 23 April 2014.

- After the leave for pregnancy, childbirth or adoption has been used, if the child is not placed in a childcare establishment, the mother is entitled to an additional leave to raise her first, second and third child until they reach the age of two, and to a leave of six months for each subsequent child (Article 164 LC). With the consent of the mother (adopter), this leave shall be granted to the father (adopter) or to one of their parents if the grandparents work under an employment contract. During this leave, the mother (adopter), or the person who has taken over the raising of the child is entitled to maternity benefits under terms and in amounts specified by the Law on the Budget of the State Social Insurance. The period of the leave is recognised as length of service calculated towards seniority.

The parental leave can be used in parts, with the minimum being five days. Each parent decides when to use the right to parental leave. The parental leave counts as an insurance period, without making insurance contributions. Health insurance is paid by the employer. The legal regulations regarding parental leave do not include in any way such rights for self-employed persons. Parental leave is only regulated for persons who fall under the Labour Code.

The Ordinance on working time, holidays and leaves⁶¹ regulates in detail the use by persons entitled to the unpaid leave for raising a child up to the age of eight.

Tables for illustration of the correlation between the Directive and the transposition measures have not been published so far.

3. Purpose and scope (Clause 1)

Bulgarian legislation concerning parental leave and related leaves is applicable to both the public and the private sector. The scope of the national transposing legislation includes all types of labour contracts, including contracts of employment or employment relationships related to part-time workers, fixed-term contract workers or persons with a contract of employment or employment relationship with a temporary agency.

4. Parental leave (Clause 2)

Unpaid leave for raising a child until it reaches the age of eight was introduced in 2004 and is regulated in Article 167a LC. After having used the leaves for raising a child up to the age of two, any of the parents (adopters), if they work under a labour contract, and if the child has not been placed in an institution with full public support, upon request, shall have the right to use unpaid leave of up to six months to take care of a child until it turns eight. The law introduced the principle of individual right of each parent to use the parental leave of six months on 1 January 2007, when this leave became non-transferable. After the amendments of the LC by SG No. 7/ 2012, upon expiry of the transposition period of the Directive, each of the parents (adoptive parents) can now use up to five months of the leave of the other parent, following the latter's consent.

Tables for illustration of the correlation between the Directive and the transposition measures have not been published so far.

In the expert's opinion, the legislation is in compliance with the minimum standards set by the Directive. There is no difference provided by law in the duration of parental leave in the public sector and the private sector.

The practice of surrogacy contradicts Bulgarian legislation. According to the Article 60 of the Bulgarian Family Code,⁶² the origin from the mother is defined by birth. The woman who gives birth to the child is the mother of the child, including in cases of assisted reproduction. In addition, Ordinance No. 28 of 20 June 2007 of the Minister of Health on

⁶¹ The Ordinance was adopted by SG No. 6/87 and amended following the amendments of the LC on the unpaid parental leave by Government Decree No. 47/ 2012, SG 19/2012, Bulgarian version available at: <http://www.mlsp.government.bg/BG/law/regulation/index.htm>, accessed 23 April 2014.

⁶² Family code (*Семейн кодекс*), promulgated with S.G. 47/2009, last amended with S.G.68/2013, Bulgarian version available at <http://www.lex.bg/bg/laws/ldoc/2135637484>, accessed 7 November 2014.

activities related to assisted reproduction⁶³ stipulates that ‘the process of implementing the assisted reproduction is not allowed to aim at surrogate pregnancies’. Furthermore, the Criminal Code contains provisions which may be related to surrogacy – Articles 182(a) and 182(b).⁶⁴ Namely, it is a criminal act if somebody in view of obtaining pecuniary benefit tries to convince a parent through donation, promise, threat, or abuse of office, to abandon his/her child or to give consent for adoption. It is a crime if someone, in view of obtaining illegal pecuniary benefit, acts as an intermediary between a person or a family wishing to adopt a child and a parent wishing to abandon a child, or a woman who agrees to carry in her womb a child to surrender for adoption. Article 182(b) criminalises the sale of children by their mother, as well as the act of a pregnant woman agreeing on the sale of her child.

5. Modalities of application (Clause 3)

The parental leave can be used in one period but also for a certain shorter periods of time, with the minimum being five days. Each parent decides when to use the right to parental leave. The parental leave counts as an insurance period, without making insurance contributions. Health insurance is paid by the employer. The legal regulations regarding parental leave do not include in any way such rights for self-employed persons. Parental leave is only regulated for persons who fall under the Labour Code.

The Ordinance on working time, holidays and leaves⁶⁵ regulates in detail the use by the persons entitled to the unpaid leave for raising a child up to the age of eight. The person who would like to benefit of the leave has to notify the employer ten days in advance. The leave is regulated as a right of the respective parent and has to be granted by the employer upon receipt of the notice. No additional requirements, such as length of service, are provided by law.

There are no special arrangements, special rules or modalities provided for different types of employers or different needs of parents in the general regulations regarding parental leave in Bulgaria.

6. Adoption (Clause 4)

In relation to the type of leave which can most strictly be defined as parental leave under the Directive – the unpaid leave for raising a child up to the age of eight – there are no additional measures to address the specific needs of adoptive parents.

We have to mention a new and recent provision of the Labour Code: Article 164b LC⁶⁶ introduces a new type of leave, which is a paid leave for raising an adopted child between the ages of two and five. The adoptive mother has the right to a leave of up to 365 days, and for six months after the adoption of the child; the rest of the leave can be transferred to the father.

7. Employment rights and non-discrimination (Clause 5)

Workers and employees are protected against less favourable treatment and dismissal in relation to the application for or taking of parental leave through the general anti-discrimination provisions of the Labour Code (Article 8) and the PADA (Article 4) which introduce a ban of less favourable treatment, inter alia, on the ground of family status.

⁶³ Ordinance No. 28 of 20 June 2007 of the Minister of Health on activities related to assisted reproduction, promulgated with S.G. 55/2007. Bulgarian version available at: www.Zdrave.bg/normative/72_naredba_asistirana, accessed 7 November 2014. In particular see: Annex on the medical standard ‘assisted reproduction’, Section 4 at Paragraph 5.14.

⁶⁴ Criminal Code (*Наказателен кодекс*), promulgated with S.G. 26/68, last amended S.G.53/2014, Bulgarian version available at: <http://www.lex.bg/bg/laws/ldoc/1589654529>, accessed 7 November 2014.

⁶⁵ The Ordinance was adopted by SG No. 6/87 and amended following the amendments of the LC on the unpaid parental leave by Government Decree No. 47/ 2012, SG 19/2012, Bulgarian version available at: <http://www.mlsp.government.bg/BG/law/regulation/index.htm>, accessed 23 April 2014.

⁶⁶ SG 104/2013, in force since 1 January 2014.

Concerning dismissal, Article 333 Paragraph 6 of the Labour Code provides for an almost absolute ban on dismissal of a worker or employee who is on a maternity, paternity or adoption leave under Article 163 LC. Such a person can only be dismissed upon preliminary notice by the employer in case of closing down of the enterprise.

According to Articles 13 and 15 of the PADA, a woman on maternity leave (including pregnancy and childbirth leave) shall be entitled, upon the end of her maternity leave, to return to her job or to an equivalent position under terms which are not less favourable to her and to benefit from any improvement of her working conditions. These rights are also granted to women on childcare leave until the child reaches the age of two. The father/adoptive father can also benefit from these rights upon return from a leave for raising a child. These persons also have the right to be trained regarding technological changes related to their job having taken place in their absence.

The parental leave for raising a child until it reaches the age of eight which is closest to the notion of parental leave under the Directive is an unpaid leave. Health insurance coverage is guaranteed. The rest of the leaves that can be taken by both parents until the child reaches the age of two are paid under different social security schemes, as described above.

These rights acquired by the worker under the specified types of leave, including parental leave, are maintained until the end of the leave. The status of the employment contract is maintained for the period of the parental leave.

8. Return to work (Clause 6)

In view of reaching full compliance with Directive 2010/18/EU, a new Article 167b LC was introduced.⁶⁷ It provides for the rights of persons returning from the leaves under Articles 163-167a LC, including parental leave under the Directive. They can negotiate with their employer about the length and organisation of their working time, as well as other conditions of the labour contract, in view of facilitating their return to work. The employer has to take into account the suggestions of the returning parent, if they can be accommodated. The law also provides for the possibility for negotiations and changing of the conditions of the employment contract also in the course of any of the leaves regulated under Articles 163-167 LC. Accrued rights are maintained upon return.

9. Time off from work on grounds of force majeure (Clause 7)

According to Article 162 LC, the worker has the right to a leave for temporary inability to work due to general sickness but also due to sickness of a child or of another close relative or spouse, due to medical examinations or other urgent family reason related to medical urgency. For this period the worker is entitled to social security benefits based on up to 70 per cent of his/her average remuneration. The length of this type of leave is unlimited for urgent medical reasons due the condition of a child, limited to 60 calendar days in a calendar year for taking care of a sick child, and up to 10 calendar days in one year for taking care of an adult relative. The detailed regulations are in Articles 40-45 of the Code on Social Insurance (COSI).⁶⁸

10. Final provisions (Clause 8)

In the opinion of the expert, the minimum standards of Directive 2010/18 have been met on paper. The problem is that the existing regulations regarding the parental leave understood as an unpaid leave for raising a child until it reaches the age of eight, as well as other related leaves for raising a child, are still used predominantly by the mothers, which is a problem of substantive equality and an uneven balance of family and professional life for both parents.

⁶⁷ SG No. 7/2012.

⁶⁸ COSI, adopted by SG No. 110/99, in force since 1 January 2000, last amended by SG No. 27/ 2014, full Bulgarian version available at: <http://lex.bg/laws/ldoc/1597824512>, accessed 23 April 2014.

In Bulgarian law, the various paid leaves for both parents for raising a child until it reaches the age of two are more favourable compared to the requirements of EU law, for example in the length of the leaves. The fact that the unpaid leave for raising a child between the ages of two and eight is six months for each parent is also more favourable, compared to the minimum of four months.

11. Sanctions (Article 2)

In case of discrimination of the parent related to gender and/or family status, special coercive administrative measures are applied by the Commission for Protection against Discrimination according to Article 76 of the PADA. The Commission can also impose penal administrative measures under Article 78 PADA, varying from approximately EUR 125 to EUR 1 000 (BGN 250 to BGN 2 000). In addition, Article 414 LC might be applicable in cases of violations of the Labour Code; alongside the rules on health and safety at work, the employer may receive a pecuniary sanction or a penalty, if a more severe sanction is not available. This penalty may amount to between EUR 767 (BGN 1 500) and EUR 7670 (BGN 15 000). A penalty is also charged to the responsible physical person, the amount of which ranges between EUR 511 (BGN 1 000) and EUR 5 113 (BGN 10 000).

Since there have not been any relevant cases or case law, the effectiveness of these measures cannot be assessed. As a more general consideration, there is a problem with the enforcement of the decisions of the Commission.

There have been no decisions for compensation issued by the courts regarding cases of violation of rights related to parental leave. The courts are the only institutions that can rule on compensation in cases of discrimination.

12. Case law

There have not been any important cases or relevant case law related to the issues regulated by the Directive.

13. Practice and other relevant issues

As mentioned above, parental leave is still predominantly used by mothers. Among the working population, statistics show that 69.5 % of those caring for children under fourteen years of age are women and 30.5 % are men.⁶⁹

According to a relatively recent research study of the Confederation of the Independent Trade Unions (*KNSB*), the summarised information gathered from the enterprises shows that women and men do not fully avail themselves of the maternity and parental leaves offered by law. It is concluded that parental leaves do not constitute a serious burden for employers. The summarised information from the employers indicates that only between 2 and 6 % of the parental leave (including the paternity leave and the leave for childbirth) is used by fathers.⁷⁰ It does not present specific data on the use of the fifteen days of paternity leave.

Policy measures for promoting the balance between family and professional life for men and women are provided in national plans and strategies, and in different projects implemented by government institutions in EU-funded projects, but no actual positive measures for encouraging fathers to take parental leave have been taken. This balance is mentioned on paper in the national strategies and plans on gender equality (these plans are adopted each year) and also, more in general, in the action plans on employment.

⁶⁹ National Statistical Institute, *Observation of the workforce*, 2010, available via: www.nsi.bg, accessed 23 April 2014.

⁷⁰ Confederation of the Independent Trade Unions (*KNSB*) *Problems and Policies for balance of family and professional life*, 2012, available via: <http://www.knsb-bg.org/>, accessed 23 April 2014.

The paid paternity leave of fifteen days provided in Article 163 Paragraph 7 of the Labour Code can be considered as a measure encouraging fathers. Other than this, clear positive measures for encouraging fathers to use their parental leave are still lacking.

The expert concludes that the minimum standards of the Directive have been transposed in Bulgarian legislation.

CROATIA – *Nada Bodiroga-Vukobrat*

1. Context

The Act on Maternity and Parental Benefits⁷¹ regulates the system of maternity and parental benefits in the form of temporal (time-related or non-cash) benefits (such as different forms of leave, time off from work, etc.) and cash allowances. Rights are administered through the Croatian Institute for Health Insurance (hereinafter: CIHI). All rights and benefits under the Act on Maternity and Parental Benefits are granted only to persons who have the status of insured person under the mandatory health insurance system. Beneficiaries may be classified in three categories:

1. employed and self-employed parents;
2. parents with other income, farmers (not liable for profit or income tax) and unemployed parents; and
3. parents who do not participate in the labour market.⁷²

Beneficiaries are entitled to temporal benefits and cash allowances based on their status, i.e. category to which they belong.

Types of temporal benefits granted to beneficiaries from the first category: maternity leave, parental leave, part-time work, part-time work due to increased care for a child under three, leave in case of the death of a child, breastfeeding leave, leave or part-time work due to care for a child with severe developmental disabilities until the child turns eight, part-time work after the child with severe developmental disabilities turns eight for as long as such need exists, adoption leave, leave of absence of a pregnant worker, worker who is breastfeeding or has recently given birth, time off for ante-natal examinations, and standstill of the labour relationship until the child turns three (CIHI only keeps record of this type of time off from work).

Types of temporal benefits granted to beneficiaries from the second category: maternity exemption from work, parental exemption from work, adoption exemption from work. Exemption from work basically means that unemployed persons do not have to seek employment. During the use of these benefits, unemployed persons are actually no longer registered with the Croatian Unemployment Service and are not entitled to unemployment allowance, because the fixed cash allowance in accordance with the Act on Maternity and Parental Benefits in the amount of 50 % of budget calculation basis is paid instead.

Types of temporal benefits granted to beneficiaries from the third category are: maternity care for a newborn child, parental care for a newborn child, adoption care for a newborn child.

Parental and adoption leave form separate categories. After the expiry of adoption leave, employed or self-employed parents are entitled to parental leave for six months. Adoption leave therefore supersedes parental leave. In this sense, it is a sort of equivalent of maternity leave, although the two types of leave are different in terms of their duration and the fact that adoption leave is a right of both employed and self-employed adoptive parents since the day

⁷¹ *Zakon o rodiljnim i roditeljskim potporama, Narodne novine* nos 85/08, 110/08, 34/11 and 54/13.

⁷² This division into the first, second and third category is given solely for the purpose of clarity in this report, and has no basis in legislative instruments or by-laws. It does not in any way refer to any order or gives precedence to either category. Parents outside the labour market include pensioners, disability pensioners, beneficiaries of professional rehabilitation, persons deemed unfit for work, students, and all other persons who are not included in the first or the second category.

of adoption, unlike the mandatory maternity leave of 28 days before birth and 70 days after birth, which belongs solely to the mother. Adoptive parents are entitled to adoption leave in an equal share, unless they agree that only one parent can use that right.

Since the legislative amendments of 2013, the regulation of the mandatory maternity leave raises issues regarding its compatibility with Directive 92/85.⁷³ Under the amendments, the duration of the mandatory maternity leave, which can only be used by the mother, was extended (from 42 days to 70 days after confinement; i.e. a total of 98 days continuously when 28 days before confinement are added). Some commentators argue that the legislator misinterpreted Article 8(1) of Directive 92/85, i.e. confused the total duration of maternity leave prescribed under that provision, with mandatory maternity leave prescribed in Article 8(2) for a duration of two weeks before and/or after confinement.⁷⁴ The difference lies in the interpretation of ‘compulsory maternity leave’ from Article 8(2). The Croatian legislator prescribes non-transferrable, compulsory maternity leave for 98 days, which is certainly generous, but not in contradiction with the Directive. Additional (non-compulsory) maternity leave begins with the expiry of compulsory maternity leave (i.e. on the 71st day after confinement) and lasts until the child is six months old. It is entirely transferrable to the father.

Parental leave is a temporal form of benefit granted to employed or self-employed parents after the child's 6th month, and may be used in parts until the child turns eight. The right to parental leave until the child turns eight is also granted to adoptive parents, after the expiry of the adoption leave. Paid parental leave is a personal right of each parent (employed or self-employed). The duration of the leave depends on two factors: first, whether only one, or both parents use the leave; and the second, the number of children. If only one parent uses the leave, the duration is six months. If both parents use the leave, the duration is eight months in total (for the first and the second child), or 30 months (for the third and each child after that, or for twins). As a rule, both parents use parental leave, each for 4 or 15 months (depending on the number of children), whereas two months are granted on a non-transferable basis. If, in accordance with their agreement, the right to parental leave is used only by one parent, its duration is 6 or 30 months. The legislative text is quite ambiguous when it comes to the non-transferable part. It only states that parental leave for the first and the second child is 8 months; or 30 months for twins, the third and each child after that; and that it is typically used by both parents, each for 4 or 15 months. If only one parent uses parental leave, its duration is 6 or 30 months. The non-transferable two-month rule is explicitly mentioned *only* in explanations of the legislative amendments of 2013 and as such applied in practice. According to CIHI, the fact that parental leave lasts 6 months when only one parent uses this right indicates that two months of the parental leave are non-transferable. It is quite ambiguous what happens to the non-transferable two-month rule in case of 30 months' leave, but the explanation offered by CIHI does not really apply in this case.

Part-time work (or more precisely, half-time work⁷⁵) may be combined with additional maternity leave and parental leave.⁷⁶ In case parental leave is combined, i.e. used in the form of part-time work, its duration is doubled (e.g. six months (180 days) of parental leave with no work equals twelve months (360 days) of part-time work). Approximate equivalents to parental leave for other categories of beneficiaries include parental exemption from work (second category of beneficiaries) and parental care for a newborn (third category of

⁷³ Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding, OJ [1992] L 348/1.

⁷⁴ I. Grgurev 'Diskriminacija trudnih radnica: kako uspješno pomiriti trudnoću sa zahtjevima tržišta' in: Ž. Potočnjak et al. (eds.) *Perspektive antidiskriminacijskog prava*, pp. 133-152, Zagreb, Pravni fakultet Sveučilišta u Zagrebu 2014, pp. 139-140.

⁷⁵ Since it can only be used for half of the full-time working hours.

⁷⁶ Maternity leave is divided into compulsory and additional maternity leave. Compulsory maternity leave is a non-transferrable right of a pregnant women/mother, granted in a continuous period from 28 days before confinement until 70 days after confinement. Additional maternity leave starts after the expiry of the compulsory maternity leave and lasts until the right to parental leave is acquired. Additional maternity leave is transferrable in its entirety or in parts.

beneficiaries), from the child's 6th month to the age of one for the first and the second child, or until the age of three age for twins, the third and each following child.

2. Implementation of Directive 2010/18

The Act on Maternity and Parental Benefits transposes the provisions of Directive 2010/18 into Croatian legislation. The last legislative amendments from 2013 changed the provisions governing the duration of parental leave and aligned the existing solutions regulating parental leave with Directive 2010/18, Directive 92/85 and Directive 2010/41.⁷⁷ According to the explanation with the draft amendments, all other obligations arising under Directive 2010/18 had already been implemented in existing legislation. However, in the view of the expert, further improvements are needed to clarify certain rights and address specific needs (see Section 10 of this report).

The expert has no knowledge of any tables within the meaning of Preamble 16 to the Directive having been drawn up and published.

3. Purpose and scope (Clause 1)

National legislation is applicable to both the public and the private sector.

All contracts, including part-time and fixed-term contracts, as well as contracts with temporary agencies are covered. Under a temporary agency contract, a natural or legal person using the work of a temporary agency worker is deemed to be the employer within the meaning of obligations under the Labour Act and other Acts regulating the health and safety of workers as well as the protection of certain categories of workers.

4. Parental leave (Clause 2)

Parental leave is a personal right of both parents (employed or self-employed), which they can use for eight months combined (for the first and the second child), or 30 months combined (for the third and each child after that, or for twins). As a rule, both parents use parental leave, each for 4 or 15 months (depending on the number of children), whereas two months are granted on a non-transferable basis. If, in accordance with their agreement, the right to parental leave is used only by one parent, its duration is 6 or 30 months. Employed or self-employed parents are entitled to use parental leave in its entirety or in parts. In the latter case it can be used in up to two periods per year, each time for at least 30 days. The duration of parental leave was revised after the entry into force of Directive 2010/18, under the legislative amendments from 2013. The duration of parental leave was extended to eight months for the first and the second child, provided that both parents take the leave. There is no difference in the duration of parental leave in the public or the private sector.

Parental leave may be used until the child turns eight. The same age limit applies for adopted children. Parental leave is an individual right of each parent.

If only one parent uses parental leave, its duration is six months (for the first and the second child). The same applies for single parents. If both parents take the leave, its duration is eight months combined (i.e. usually four months one parent, four months other parent; out of which two months are supposed to be non-transferable). Both parents cannot use parental leave simultaneously. This measure is aimed to motivate both parents to use parental leave.

Surrogacy is not legally regulated in Croatia. Consequently, parental leave would be granted only in case of adoption, after the expiry of adoption leave.

⁷⁷ Directive 2010/41/EU of the European Parliament and of the Council of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC, OJ L 180/1 2010.

5. Modalities of application (Clause 3)

Parental leave may be either full-time or part-time (if combined with part-time work). In the latter case, its duration is doubled. It can either be used on a one-time basis or in various periods (piecemeal). In the latter case, it can be taken up to two times a year, with a minimum duration of 30 days. Each interruption and consequent taking up of parental leave requires a formal administrative procedure and decision of CIHI, at the request of the beneficiary. Both the Labour Act and the Act on Maternity and Parental Benefits are silent on the question how much notice a worker must provide to his or her employer when he or she takes parental leave for the first time. The only prescribed notice period is the one in relation to CIHI (15 days before the starting date of the leave, see Article 44(4) Act on Maternity and Parental Benefits). Employed parents who intend to change the modality of use of parental leave or to take up the unused part of parental leave are obliged to notify their employer at least 30 days in advance and obtain the employer's written consent. The employer is entitled to deny or postpone the employee's intended change up to a maximum of 30 days.

During parental leave, an absolute dismissal ban applies (Article 71(1) Labour Act, hereinafter: LA⁷⁸). This ban, however, does not prevent expiration of a fixed-term contract during parental leave or use of any other pregnancy or maternity related benefit. Workers on parental leave are entitled to terminate the labour contract by giving extraordinary notice, at least 15 days before their return to work. Provisions on notice periods do not apply in cases of extraordinary notice.

Work and/or length of service are no prerequisites for parental leave as a temporal benefit. However, the amount of cash allowance during parental leave depends on the condition of prior length of service. For a full cash allowance (calculated from the salary calculation basis), a minimum of 12 months of uninterrupted service or 18 months of service with interruptions in the two years preceding the parental leave is required. The amount of cash allowance is limited to a certain share of the salary calculation basis. The cash allowance as salary compensation awarded per parent during the first six or eight months⁷⁹ of parental leave is paid in the full amount of salary calculation basis (100 % of the basis for the calculation of salary compensation), but cannot, for the full working time, exceed 80 % of the budget calculation basis per month (currently approximately EUR 347, or HRK 2 660.80). The cash allowance may not be less than 50 % of the budget calculation basis (currently approximately EUR 217, or HRK 1 663). After the first six (or eight) months of parental leave, the cash allowance is fixed at 50 % of the budget calculation basis. If the prior length of service requirement is not satisfied, a person is still entitled to parental leave, as well as the cash allowance. However, the amount of the cash allowance is fixed at 50 % of the budget calculation basis.

In case of successive fixed-term contracts with the same employer, the sum of contracts is taken into account for the purpose of calculating the qualifying period.

There are no situations where the granting of parental leave may be postponed for justifiable reasons related to the operation of the organisation.

Parental leave applies equally, regardless of the size of the firm. There are no special arrangements for small firms.

There are special modalities of leave suited for parents of children with a disability or a long-term illness. They are separate from maternity and parental leave and include:

1. part-time work (half of the full working time) due to increased care for a child under three: after parental leave, one of the employed or self-employed parents is granted this right if a child needs increased care for health and developmental reasons, according to the professional opinion and assessment by the family physician and the CIHI-designated competent committee of physicians;

⁷⁸ *Zakon o radu, Narodne novine* nos 149/09, 61/11, 82/12 and 73/13.

⁷⁹ I.e. six months if only one parent uses parental leave, eight months if both parents use the right to parental leave.

2. leave of absence due to care for a child with severe developmental disabilities until the child turns eight: after maternity or after/during parental leave, one employed or self-employed parent of a child with severe bodily or mental impairment or severe mental illness is granted this right based on the findings and professional opinion of the competent body for medical expertise in accordance with the rules of the mandatory health insurance system. Both parents have to be employed or self-employed before taking up this right and for its entire duration;
3. part-time work (half of the full working time) due to care for a child with severe developmental disabilities until the child turns eight, and after that time for as long as the need exists: after maternity or after/during parental leave, one of the employed or self-employed parent of a child with severe bodily or mental impairment or severe mental illness is granted this right based on the findings and professional opinion of the competent body for medical expertise in accordance with the rules of the mandatory health insurance system. Both parents have to be employed or self-employed before taking up this right and for its entire duration. This right may be granted for a certain period of time, depending on the results of the expertise.

Remuneration during these types of leave is granted in the form of salary compensation, based on the prescribed parameters of calculation.

6. Adoption (Clause 4)

Other than the right to adoption leave and other general forms of temporal support and/or cash allowance, there are no other specific measures designed for adoptive parents.

7. Employment rights and non-discrimination (Clause 5)

Provisions to protect workers against less favourable treatment or dismissal during or on account of parental leave exist. During parental leave and for 15 days following its termination, the employer has no right to terminate the employment contract with a person on parental leave (absolute ban of dismissal, Article 71(1) LA). The ban does not prevent the expiry of a fixed-term contract. Workers who have been on parental leave are entitled to additional professional training upon their return to work, if changes in work techniques or methods have taken place during their absence, as well as to any other benefits arising from the improvement of work conditions (Article 73(3) LA).

After parental leave, workers are entitled to return to the same job as the one they had prior to using this right. If the need for this job no longer exists (which could be seen as an open door for abuse by employers), the employer is obliged to offer the worker an employment contract for another appropriate job, whereas work conditions may not be worse than those applicable to the previous job (Article 73(1) LA). All rights acquired or in the process of being acquired are maintained until the end of parental leave. If the previous duration of employment relationship is relevant for the purpose of acquiring certain rights which arise out of the employment relationship or are connected to it, time spent on parental leave will be deemed as full-time work (Article 69 LA; this assumption applies to other forms of maternity and parental related benefits as well). The employment contract or relationship does not have a standstill status. All social security entitlements continue to accrue during the period of parental leave. However, this should not be confused with the ‘standstill’ status of an employment relationship, as a special right of employed parents under the Act on Maternity and Parental Benefits. A standstill can be used by only one parent, after expiry of maternity and parental leave and until a child reaches 3 years of age. An employer issues a decision granting the standstill, whereas the CIHI only keeps registry of such decisions. A standstill basically means that the employee is not working during this period, but still keeps his/her employment contract with the employer intact. It is a sort of unpaid leave, during which a parent does not receive pay or any remuneration, granted for specific reasons (taking care of a child under 3 years of age). Rights and obligations arising from the employment

relationship have a standstill status during the use of this right. Rights from the mandatory health insurance and pension insurance systems during this period are regulated in accordance with the Acts on the mandatory health insurance and pension insurance systems. Beneficiaries using the right to a standstill of the labour relationship may either have mandatory health insurance as a family member (as a marital or extra-marital partner of the insured person) or as a person who is not insured under any other basis mentioned in the Act on mandatory health insurance, and who continues to pay mandatory health contributions. Pension rights accrue if a person pays so-called 'extended or by-pass pension insurance' contributions during this period.

The cash allowance during parental leave is not remuneration by the employer. The cash allowance (salary compensation) is remunerated at the expense of CIHI for all employed or self-employed parents, regardless of the sector. The cash allowance is limited to a certain amount of salary or budget calculation basis and depends on the length of service (for a detailed explanation see the answer in Section 5 above).

8. Return to work (Clause 6)

Normally, the daily or weekly working hours schedule is determined by the employer, unless it is regulated by law or stipulated in a collective agreement, an agreement between work council and employer or in the employment contract. The rescheduling of working hours basically lies with the employer, if the nature of the work so requires (Article 47(1) LA). There is no specific provision obliging the employer to take into account workers' needs when scheduling or rescheduling working hours. However, the employer will need a written declaration of voluntary acceptance of such rescheduling from pregnant women, parents with a child under three or single parents with a child under six, as well as from part-time workers. Workers returning from parental leave are deemed to be protected within the categories of workers who will have to give a written declaration of acceptance of rescheduling of working hours. The rescheduling of working hours is a special instrument which mainly concerns workers in the services sector (such as tourism, catering, etc.). In accordance with the Safety-at-Work Act,⁸⁰ pregnant workers, workers who are breastfeeding or have recently given birth may not work in jobs which endanger their or their child's life (Article 37 Safety-at-Work Act). The employer has a duty to protect these categories of workers from dangerous and harmful working conditions by adapting working conditions and working hours or by providing other equivalent jobs or positions, if adaptations are not possible or justifiable. If it is impossible to implement these types of mitigating measures, pregnant women, women who are breastfeeding or have recently given birth are entitled to a paid leave, at the expense of the employer. Salary compensation amounts to the average salary paid in the last three months preceding this type of leave. The right to this type of leave expires when the worker acquires the right to maternity leave; when the child reaches the age of one; when a competent body establishes that the employer has eliminated the harmful working conditions; or when the employer secures an equivalent job for the worker.

There are no mechanisms to ensure or promote that workers and employers maintain contact during the period of leave and make arrangements for appropriate reintegration measures.

9. Time off from work on grounds of force majeure (Clause 7)

Workers are entitled to time off from work in order to take care of closer family members who have fallen ill (child or spouse), under the conditions prescribed under the Act on Mandatory Health Insurance.⁸¹ A cash allowance in the form of salary compensation is received during this time, at the expense of CIHI. For children under three, salary compensation is calculated from 100 % of the salary calculation basis. The Act on Mandatory

⁸⁰ *Zakon o zaštitu na radu, Narodne novine* nos 59/96, 94/96, 114/03, 100/04, 86/08, 116/08, 75/09 and 143/12.

⁸¹ *Zakon o obveznom zdravstvenom osiguranju, Narodne novine* nos 80/13 and 137/13.

Health Insurance limits the duration of the right to receive salary compensation in relation to the age of a child (for a child under 7, up to 60 days of sick leave per illness; for a child from seven to 18, up to 40 days of sick leave per illness). By way of exception, a committee of physicians established with the CIHI may prolong the duration of sick leave, if this is necessary due to the child's health condition.

10. Final provisions (Clause 8)

All minimum requirements specified in the Directive have been implemented in Croatian legislation. However, the duration of the mandatory maternity leave is questionable in terms of its compatibility with Directive 92/85 (see Section 1 above). There is also room for better targeted and more detailed regulation in relation to implementation of Clause 6 (return to work) in relation to the scheduling and/or changing of working hours, with a view to taking into account workers' needs (apart from the worker's consent for rescheduling of working hours, as mentioned under Section 8 of this report). This also applies to prevention of possible abuse in the situation of a worker returning from maternity, parental or adoption leave, when the need for his/her previous job no longer exists. In the view of the expert, the 30-month parental leave and the non-transferability of two months should be more clearly defined in legislation, and not left to the interpretation of the competent authorities. Legislative amendments are also needed in relation to the definition of duration of leave for single parents. Policy measures and/or legislative amendments should also address the specific needs of adoptive parents. In addition, it would be advisable to introduce measures that aim to maintain at least a minimum contact during the period of leave; many structural changes at the employer's side can occur during this period, which may affect the worker's ability to reintegrate upon return to work. However, this is a delicate issue, and prescribing an obligation to keep contact could in practice be abused as a form of pressure on employees to cease the leave and return to work.

More favourable conditions than envisaged in Clause 2.2 of Directive 2010/18 are prescribed in terms of encouraging equality in the use of parental leave, in that two months of the parental leave are non-transferable. Also, the fact that there is no postponing of parental leave due to justifiable reasons related to the operation of the organisation (Clause 3.1.c of Directive 2010/18) can be considered more favourable for workers.

11. Sanctions (Article 2)

Each legislative instrument which regulates certain rights in relation to parental leave (e.g. the Act on Maternity and Parental Benefits, the Labour Act) envisages sanctions for breach of its provisions, punishable by monetary fines. A system of sanctions for misdemeanour is established both for the employer and for the beneficiary who misuses the rights granted under the Act on Maternity and Parental Benefits (Article 58 Act on Maternity and Parental Benefits). The Labour Act prescribes sanctions for the employer who violates workers' rights in relation to the use of any maternity and parental related rights, return to work, dismissal during the use of these rights, etc. These violations are classified as the most serious misdemeanours of employers, and the monetary fine varies according to the seriousness of the breach, up to approximately EUR 13 000 (HRK 100 000). Workers are also entitled to seek damage compensation.

12. Case law

A recent judgment of the European Court of Human Rights condemned the previous regulation of adoption leave as discriminatory. In November 2013, the European Court of Human Rights issued a judgment in the case *Topčić-Rosenberg v. Republic of Croatia*,⁸²

⁸² European Court of Human Rights, *Topčić-Rosenberg v. Croatia*, Application No. 19391/11, Judgment of 14 November 2013.

acknowledging that Ms. Topčić-Rosenberg had been discriminated against because she was not given the right to maternity leave after adopting a child who was three years old at the time. The adoption took place in 2006, while she was working as a self-employed person. She filed an application to CIHI for a paid maternity leave, which was rejected with the explanation that the use of maternity leave to biological parents is granted only for a child under one, and that consequently, adoptive parents should be treated equally as biological parents. Having exhausted all domestic legal remedies to no avail, the applicant turned to the European Court of Human Rights for relief. The European Court of Human Rights determined that her rights to personal and family life were violated by the discriminatory practice of the CIHI, and awarded damages in the amount of EUR 10 500. Being unable to discern any objective or reasonable justification for the difference in treatment of the applicant as an adoptive mother, in granting her the right to maternity leave after the adoption of her child, and a biological mother, who had such a right from the time of the birth, the European Court of Human Rights considered that such a difference in treatment constituted discrimination. The judgment was issued at a time when Croatia had already changed the legislative framework regarding adoption leave, granting adoptive parents a six-month adoption leave regardless of the age of the adoptive child (until 18), as well as a parental leave after the expiry of adoption leave until the child turns eight, on the same conditions as those applying to biological parents.

No other case law concerning this subject matter can be reported.

13. Practice and other relevant issues

Croatian society is traditional and rooted in the still strongly pronounced assumption that the father is the breadwinner, while the mother should take care of the home and the children. The Act on Maternity and Parental Benefits was amended in 2011 so as to encourage fathers to use parental leave more often (e.g. by granting two additional months of leave if the father uses parental leave for a minimum duration of three months) with the projected increase in the usage of these rights of 10-15 % in the first year of the application of the amended Act.⁸³ Fathers are also entitled to additional maternity leave (if transferred from the mother), parental leave, part-time work, work with reduced working hours due to increased care for a child, leave of absence or work with reduced working hours due to care for a child with developmental disabilities, and unpaid leave of absence until a child turns three. However, from the total number of maternity and parental leaves registered in 2011, only in 2.57 % cases was the right used by men. For example, an additional maternity leave of up to 6 months of the child's age was used by men in only 0.47 % of the cases, whereas 181-900 days (i.e. from the 6th to the 30th month of the child/children) of the parental leave were used by men in 4.67 %. The gender pay gap may be one of the causes for these low statistics, since women still earn less than men on average.⁸⁴ Not surprisingly, financial reasons (earning less than the mothers) are the primary motivation for the fathers who decide to use one of the rights under the Act on Maternity and Parental Benefits.

There is evidence that the CIHI applies discriminatory practices in determining the rights to the cash allowance of pregnant women and women who have recently given birth.⁸⁵ In some cases, the cash allowance was denied to women who had entered into an employment relationship during their pregnancy. The CIHI assumes that such employment relationships are fictional and fraudulent, and concluded with the sole intention of acquiring maternity benefits, which that person would not have normally been entitled to. This practice is unacceptable firstly because the question of the validity of employment contracts lies solely

⁸³ Draft Act on Amendments to the Act on Maternity and Parental Benefits with explanations, available at: <http://www.sabor.hr/Default.aspx?art=38252>, accessed 25 March 2014.

⁸⁴ The average difference in gross earnings between women and men is around 10 %. Croatian Bureau of Statistics, Women and Men in Croatia 2014, www.dzs.hr, accessed 8 May 2014.

⁸⁵ The specific cases of discriminatory practices are described in the Annual Reports for 2011 and 2010 of the Ombudsperson for Gender Equality, which is available at: <http://www.prs.hr/index.php/izvjesca>, accessed 16 March 2014.

within the jurisdiction of the courts, not with the CIHI. Secondly, an employer is legally prohibited from asking female workers pregnancy and maternity related questions and may not refuse to hire a pregnant woman solely on that ground. The CIHI completely ignores this obligation and presumes that pregnant women who enter into employment relations are acting fraudulently. The available legal mechanism for the protection of their rights in these cases might prove inadequate, as it is limited to an administrative procedure and filing a complaint before the administrative court. The effectiveness of any judgment rendered in administrative dispute proceedings is diminished by the fact that the average duration of proceedings is four to five years.

CYPRUS – Lia Efstratiou-Georgiades

1. Context

The Protection of Maternity (Amendment) Law No. 64(I)/2002 harmonised the Law with Directive 92/85/EEC.⁸⁶ The most recent amendment of the Law by the Protection of Maternity (Amendment) Law No. 70(I)/2011 was adopted in order to: a) harmonise Cypriot law with Article 10 of Directive 92/85/EEC, b) provide that for adoption of a child under the age of twelve, the maternity leave is 16 weeks (for natural mothers it is 18 weeks), c) provide that a pregnant woman is entitled to paid time off work for antenatal examinations, d) provide for extension of maternity leave in cases where the baby needs to stay in an incubator for additional days due to premature birth or any other health reason.

At the end of maternity leave, the working mother has the right to a daily one-hour work break or to start work one hour later or to leave work one hour earlier for a period of nine months, for breastfeeding and childcare, without any loss of pay. In the case of adoption, the period of nine months comprises the period of maternity leave, so the entitlement to one-hour break starts after the 16 weeks maternity leave (it can last only up to 5 months).

The Parental Leave and Leave on grounds of Force Majeure Law No. 47(I)/2012 harmonised national law with Directives 2010/18/EC and 97/80/EC.⁸⁷

Any employee parent is entitled to take unpaid parental leave for a maximum of 18 weeks in total for the birth or adoption of a child, in order for the parent to take care of and participate in the raising of the child, up to the child's eighth birthday. In the case of a child with a disability such leave can be taken up to the child's 18th birthday.

Parental leave constitutes an important right for employees who are parents, since it allows both mothers and fathers to be absent from their work for the purpose of taking care and participating in the raising of their child.

An employee is entitled to seven days off work per year without pay on grounds of force majeure for urgent family reasons.

Parental leave and adoption leave are separate categories of leave. Adoption leave can be given to a female worker (only the adoptive mother) for a total period of 16 weeks immediately after adoption of a child under the age of twelve, under the Protection of Maternity (Amendment) Law No. 70(I)/2011 and is paid, whereas parental leave is provided under the Parental Leave and Leave on Grounds of Force Majeure Law No. 47(I)/2012 and is unpaid. However, during the absence of the employee from his/her work, he/she is credited with the insurable earnings provided in the Social Insurance Laws of 1980 as amended. This applies to maternity, adoption, and parental leave.

A female worker who is on maternity or adoption leave receives 75 % of her salary under the Social Insurance Laws. There is no paternity leave in Cyprus.

⁸⁶ Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) OJ L 348 of 28 November 1992, pp. 1-8.

⁸⁷ Council Directive 97/80/EC of 15 December 1997 on the burden of proof in cases of discrimination based on sex, OJ L 14/6 of 20 January 1998.

Parental leave is considered as a measure aimed at facilitating the reconciliation of work and family life. However, as it is unpaid, its use by working parents is limited especially by fathers and this does not promote a more balanced share of family responsibilities.

2. Implementation of Directive 2010/18

Directive 2010/18 was implemented in Cyprus on 18 May 2012 by the Law on Parental Leave and Leave on Grounds of Force Majeure No. 47(I)/2012.

Cyprus has not drawn up and published tables to illustrate the correlation between the Directive and transposition measures.

3. Purpose and scope (Clause 1)

The national legislation is applicable to both the public and the private sector.

Law No. 47(I)/2012 applies to all workers, men and women, who have completed a six-month period of employment with the same employer, including part-time workers, fixed-term contract workers and persons with a contract of employment or employment relationship with a temporary agency.

4. Parental leave (Clause 2)

The total duration of parental leave is up to 18 weeks. If the parent is a widow or widower the duration is 23 weeks.

The duration of parental leave has been revised from 13 to 18 weeks with the entry into force of Directive 2010/18.

There is no difference in the duration of parental leave in the public and the private sector.

The child's maximum age for the parent to be entitled to parental leave is 8. In the case of adoption the child's age limit is 12. The right to parental leave is individual for each of the parents. In the case that one of the parents has taken parental leave for a minimum of two weeks, he/she is allowed to transfer to the other parent two weeks of the rest of the total duration of his/her leave. Only two weeks of the leave are transferable.

There is no provision for parental leave in case of surrogacy.

5. Modalities of application (Clause 3)

Parental leave can be taken in the form of full-time days, at least a minimum of 7 calendar days at a time and a maximum of 5 weeks per year in the case of one or two children and a maximum of 7 weeks in case of three or more children.

The worker who intends to take parental leave must give a three-week written notice to his/her employer stating the date of beginning and the date of ending of leave. In case of serious illness of the child as expressly stated in the law the period of notice is reduced to one week.

The required minimum period of service in order to benefit from parental leave is six months. In case of successive fixed-term contracts with the same employer the sum of these contracts is taken into account for the purpose of calculating the qualifying period.

The employer may, after consultation with the worker, postpone the date of granting parental leave for reasons related to the proper functioning of the business, e.g. when the work is of a seasonal nature and a replacement cannot be found or if in the same period a substantial number of workers request parental leave and their duties have strategic importance for the business. The postponement may not exceed a period of six months.

There are no special arrangements for small firms.

For children with a disability or a long-term illness, parental leave can be taken up to the child's 18th birthday. Also, as stated above, in case of serious illness of the child as expressly

stated in the law, the period of notice of the beginning and ending of the leave is reduced from three weeks to one week.

6. Adoption (Clause 4)

In case of adoption, parental leave can be taken after the expiry of maternity leave within a period of eight years from the date of adoption, until the child reaches the age of twelve.

7. Employment rights and non-discrimination (Clause 5)

The application for or the taking of parental leave or the absence from work on grounds of force majeure cannot in any way be reason for less favourable treatment or dismissal and does not interrupt the continuity of employment. Also, no discrimination on ground of sex is allowed as regards rights of workers to such leave.

For the period of absence on parental leave workers are credited with insurable earnings under the Social Insurance Law and the period of absence is taken into account for calculating their entitlement to annual paid leave.

Also, the period of absence from work is considered as period of employment for purposes of eligibility to compensation under the Termination of Employment Law of 1967 as amended, and for the purposes of eligibility e.g. for promotion or old-age pension on the basis of length of service.

At the end of parental leave workers have the right to return to the same job or, if that is not possible, to an equivalent or similar job consistent with their employment contract or employment relationship.

Rights acquired or in the process of being acquired by the worker on the date on which parental leave starts are maintained as they stand until the end of the parental leave.

The status of employment remains the same and nothing can be changed to deteriorate the worker's position.

As mentioned above there is continuity of entitlements to social security and also to healthcare during the period of parental leave.

Parental leave is unpaid both in the public and in the private sectors. The social security system does not provide for an allowance during parental leave.

8. Return to work (Clause 6)

The worker, when returning from parental leave, may request changes to his/her working hours and/or patterns for a set period of time. The employer shall consider and respond to such request, taking into account both the employer's and the worker's needs. The employer can refuse the changes requested by the worker or postpone their application on grounds related to the needs of the business.

Workers and employers may maintain contact during the period of leave and make arrangements for any appropriate reintegration measures, which can be jointly agreed. The law does not mention any mechanisms to promote or ensure such contact.

9. Time off from work on grounds of force majeure (Clause 7)

A worker is entitled to time off from work on grounds of force majeure for urgent family reasons in case of sickness or accident to a dependent member of the worker's family (child, spouse, sister or brother, grandfather, grandmother), which makes the worker's presence indispensable. The leave may be granted either as a whole or in one single period or piecemeal. The worker must inform his/her employer as early as possible of his/her intention to make use of such leave. If the workers are spouses, the leave is granted to them separately.

A worker is entitled to such leave for up to seven days each year. This leave is unpaid.

10. Final provisions (Clause 8)

The national legislation of Cyprus has the following more favourable provisions: a) for widowed parents, parental leave can last up to 23 weeks, and b) relating to non-transferability, only two weeks of the total duration of parental leave can be transferred from one parent to the other, under specific conditions.

11. Sanctions (Article 2)

Civil actions relating to the application of the Parental Leave and Leave on Grounds of Force Majeure Law No. 47(I)/2012 fall under the competence of the Industrial Tribunal. Breach of the provisions of the law by an employer who is found guilty constitutes a criminal offence and is subject to a fine of up to EUR 7 500. In case of unlawful dismissal, the worker is protected under the Termination of Employment Law.

The sanction provided in the law is considered dissuasive.

12. Case law

There is no case law in Cyprus relating to parental, adoption and/or time off leave.

13. Practice and other relevant issues

According to data from the Department of Labour Relations the use of parental leave by parents is very limited. Only 3.4 % of eligible parents took parental leave in the years 2011 and 2012, among which men only represented 11 %.

There are no positive action measures at national level to promote a more balanced sharing of family responsibilities between both parents in relation to these leaves. However the matter is under study by the social partners.

The gender pay gap can be mentioned as a relevant issue, as frequent absences of women from work because of family-related leaves affect their earnings.

CZECH REPUBLIC – *Kristina Koldinská*

1. Context

Maternity leave, parental leave and adoption leave are regulated by the Czech Labour Code.⁸⁸ The regulation of leaves is quite generous in general. The parental leave (and also adoption leave) may last until the child reaches the age of three, while on certain conditions a social security allowance can be paid until the last child in the family reaches the age of four.

Parental leave can also be provided in the case of adoption, so there is no separation between these two categories. The leave provided to adoptive parents is not connected with maternity leave, unless the adoption concerns a new-born child and is provided to the adoptive mother in the same circumstances as a biological mother.

Parental leave is only a leave (time off), not a subsidy or allowance. Social security allowance is provided to parents according to Act No. 117/1995 Coll., on State Social Support. Maternity leave is provided only to the mother of a child and is strongly connected with pregnancy and recovery after the delivery. A woman can take it starting six (max. eight) weeks before the planned date of delivery and after the delivery for a further 22 weeks. Parental leave can be taken by the father of the child directly after its birth and can last until the child reaches the age of three, the mother takes parental leave right after her maternity leave ends.

⁸⁸ Act No. 262/2006 Coll.

2. Implementation of Directive 2010/18

There has been no special implementation of Directive 2010/18 in the Czech Republic, as the requirements of the Directive were already fulfilled before it was adopted, due to the generous Czech social policy in protecting parents, especially mothers. The Directive is implemented through some provisions of the Labour Code and of the State Social Support Act. National collective agreements do not play any significant role in this sense.

The Czech Government draws up correlation tables for each piece of EU secondary law. The correlation table for Directive 2010/18 was drawn up by the Ministry of Labour and Social Affairs, but has not been published.⁸⁹

3. Purpose and scope (Clause 1)

The national legislation on parental leaves is applicable to both the public and the private sector. It is applicable also to part-time workers and fixed-term contracts. If the fixed-term period agreed in the employment contract ends during parental leave, there is no obligation of the employer to prolong employment relationship, but the parental allowance from the State Social Support system continues to be paid without any change. Agency employees work on the basis of a normal employment contract, so they are also provided by parental leave. However, most agency workers work on a fixed-term basis, so the above also applies to them.

4. Parental leave (Clause 2)

According to Section 196 of the Labour Code, the employer must grant a male or female employee parental leave if requested. Parental leave is granted to the mother of the child at the end of her maternity leave (the general duration of maternity leave is 28 weeks; the period can be extended up to 37 weeks if the woman gives birth to two or more children at the same time) and to the father of the child from the day that the child is born, for the amount of time applied for, until the child reaches the age of three. The parents of the child are entitled to take maternity and parental leave concurrently. The duration of parental leave (until the youngest child in the family has reached the age of four) has not been changed for a long time, actually, since it was introduced. There is no difference in the duration of parental leave in the public sector and the private sector.

The child's maximum age for the parent to be entitled to parental leave is three. Parental leave may also be taken later, not right after the birth of the child (e.g. by the father). It is becoming (even if very slowly) more common for the mother to take care of the child in the first year, and for the father to take parental leave for another year or more, while the mother returns to work.

The right to parental leave is individual for each of the parents and it can also be taken simultaneously, so there is no necessity to transfer part of the parental leave to the other parent.

Surrogacy as such is not legislated yet in the Czech Republic, so there are no entitlements envisaged.

5. Modalities of application (Clause 3)

Parental leave is in general meant as a full-time leave. During this leave, the right to parental allowance paid from the State Social Support system is foreseen, as explained above. The parent's income is not tested; the parent may carry out an occupational activity without losing their entitlement to parental allowance, on the condition that during the period of this occupational activity, the parent ensures that the child is in the care of another adult. After the child reaches the age of two, it can also go to kindergarten while the entitlement to parental

⁸⁹ Correlation tables in general are not open to the public, but the respective Ministries responsible usually provide them on request.

allowance remains intact until the child reaches the age of four. If the child is ill for a long period or disabled, the entitlement to parental leave also continues to apply when the child goes to a special rehabilitation institution or kindergarten for children with disabilities for a maximum of 4 or 6 hours a day (6 hours are for pre-school disabled children, if at least one of the parents is disabled, it is 4 hours a day).⁹⁰ In this case there is no age limit for the leave entitlement.

There is no service requirement in order to benefit from parental leave. The Labour Code does not allow postponing the granting of parental leave for justifiable reasons related to the operation of the organisation and there are no special arrangements for small firms. It is very simple to apply for parental leave: the employee only has to inform his/her employer when he/she plans to take the parental leave and for how long. This planned period may be prolonged by the employee until the child reaches the age of three. The employer is obliged to accept the prolongation of the parental leave.

In case of maternity leave, when the child is six weeks old, it is possible for parents to conclude a written agreement between themselves and the maternity benefits (financial aid in maternity) can be transferred to the father of the child (if he fulfils the condition of having had sickness insurance for the required period – in general at least 270 days in the previous two years).⁹¹

6. Adoption (Clause 4)

According to Section 197(3) of the Labour Code, if the child is adopted after he/she reached the age of 3, but before reaching the age of 7, the adoptive parent(s) is/are entitled to 22 weeks of parental leave. This rule is not applicable to biological parents. The paid maternity leave, which is a sickness benefit legally entitled ‘financial support during maternity’, can also be applied for by one of the adoptive parents.

7. Employment rights and non-discrimination (Clause 5)

The Czech Labour Code includes general equal treatment provisions, including employees taking parental leave.⁹² The same Act also includes strong protection of employees on maternity leave, parental leave or employees taking care of children. Section 53 of the Labour Code prohibits giving notice to an employee during the period of protection, i.e. (inter alia) ‘at a time when a female employee is pregnant or when a female employee is on maternity leave or when a female or male employee is on parental leave.’ If an employee has been given notice prior to commencement of the period of protection and the notice period is to expire during the period of protection, the period of protection shall not be included in the notice period. The employment relationship shall end only upon expiry of the remaining part of the notice period after expiry of the period of protection, unless the employee notifies the employer that he/she does not require the extension of the employment relationship.

The Czech law guarantees the right to return to the same job or, if this is not possible, to an equivalent or similar job consistent with their employment contract. According to Section 47 of the Labour Code: ‘if a female employee commences work after termination of maternity leave or a male employee commences work after termination of parental leave within the scope of the time for which a female employee is entitled to take maternity leave, the employer shall be obliged to assign him/her to the original work and workplace. If this is not possible because the original work has ceased to exist or a workplace has been terminated, the employer shall assign him/her according to the employment contract’. For the parental leave after the period of maternity leave until the child reaches the age of three there is a general requirement in Section 38 for the employer to assign work to the employee according to the employment contract.

⁹⁰ Compare Section 31 Paragraph 3 of Act No. 117/1995 Coll.

⁹¹ Compare Section 32 of Act No. 187/2006 Coll., on sickness insurance.

⁹² Compare Section 16 of the Labour Code.

In general, rights acquired on the date on which parental leave starts are maintained as they stand until the end of the parental leave. During parental leave, the employment relationship is suspended, as parental leave (and also maternity leave) is defined by the Labour Code as one of the impediments to work for the employee (Part 8 of the Labour Code – Impediments to Work).

The social security system includes continuity of entitlements, e.g. the entitlement to healthcare continues without any interruption, and the State pays healthcare insurance contributions for people on maternity and parental leave, as well as for their children.⁹³ People taking care of children until the age of 4 are also insured for purposes of pension insurance, even if they do not pay insurance during this period.⁹⁴

As explained above, parental leave is not remunerated by the employer, but during parental leave there is entitlement to parental allowance, which can be drawn until the child reaches the age of four. This is provided to all parents from all sectors. The amount and duration can be subject to the choice of the parent. If both parents take parental leave at the same time, only one will receive the parental allowance. Parental allowance is provided until a total amount of approximately EUR 8 500 (CZK 220 000) until the child reaches the age of four. A parent may choose the amount of parental allowance and thus the period of its duration on the condition that at least one parent in the family is participating in sickness insurance, and has earned a certain amount of salary. The maximum monthly parental allowance can be EUR 445 (CZK 11 500). The minimum parental allowance is EUR 147 (CZK 3 800).⁹⁵

8. Return to work (Clause 6)

Workers returning from parental leave can request changes to their working hours. According to Section 241 of the Labour Code, when assigning employees to shifts, employers shall also be obliged to take into consideration the needs of female and male employees taking care of children. If a female or male employee taking care of a child younger than fifteen requests reduced working hours or some other suitable modification of their full-time weekly working hours, the employer shall be obliged to satisfy the request unless this is prevented by serious operational issues. Furthermore, employees who take care of a child younger than one may not be required by the employer to work overtime. The abovementioned requests are not subject to any further conditions.

There are no special mechanisms to promote that workers and employers maintain contact during the period of leave and make arrangements for any appropriate reintegration measures other than those described in the previous section of this report.

9. Time off from work on grounds of force majeure (Clause 7)

Part 8 of the Labour Code covers several obstacles to work, and special protection for the duration, including time off from work on grounds of force majeure for urgent family reasons in case of sickness or accident.

An employer shall excuse absence from work of a male employee/female employee during provision of care to a sick family member and to a child younger than ten. This will apply when for serious reasons the child cannot be placed in the care of an educational facility or school. In addition, this will apply if the person otherwise caring for the child has fallen ill or quarantine has been imposed on her/him (a quarantine measure), or if that person has undergone a check or treatment in a health service facility. The employee shall not be entitled to any wage compensation for this period, but will be entitled to the sickness insurance benefit. If the employee provides a medical certificate verifying the illness of the child, there

⁹³ Compare Section 7 Paragraph 1 letter d) of Act No. 48/1997 Coll., on public healthcare insurance.

⁹⁴ Compare Section 5 Paragraph 2 and Section 12 Paragraph. 1 of Act No. 155/1995 Coll., on pension insurance.

⁹⁵ More detailed information about amounts of parental allowance can be found at the official website of the Ministry of Labour and Social Affairs, available at: <http://www.mpsv.cz/en/1603>, accessed 10 April 2014.

are no maximum limits per year for these absences, based on the age of the child or any other criteria.

Furthermore, an employer may provide time off to an employee for other serious reasons too, particularly for attending to serious personal, family and property matters that an employee is unable to attend to outside working hours. Legal provisions put no limitations on the length of such provided time off from work. It is possible to agree with the employer that the employee makes up for such periods of absence from work. An employer, however, has no legal obligation to enable an employee to make up for the period of absence, if not prohibited by serious operational reasons.

In collective agreements or companies' internal rules, the rights of male/female employees for time off may be expanded, or, for wage compensation in excess of the above scope, their scope may be extended to also include additional instances entitling a male employee/female employee to time off or to wage compensation.

There are no further specifications of conditions to access to the abovementioned time off. There is no limitation of instances per year.

10. Final provisions (Clause 8)

Czech legislation in general is generous towards parents of small children. This is especially true with regard to the lengths of periods of parental leave, and the entitlements to parental allowance, where it is more favourable than what the Directive requires.

11. Sanctions (Article 2)

The general system of sanctions is included in Act No. 251/2005 Coll., on labour inspection. Section 18 regulates infringements in the area of special working conditions for some groups of employees. If employers do not fulfil their own obligations, e.g. do not provide their own employees with parental leave, even if they request it, they may be imposed a fine of up to EUR 33 000 (CZK 1 million). There is also a system of damage compensation, if the employee applies for it in a civil procedure.

12. Case law

The expert is not aware of any case law (or legal provision) related to parental, adoption and/or time-off leave that is contrary to the relevant case law of the CJEU.

To the knowledge of the expert, there is no case law related to parental, adoption or time-off leave which provides more favourable rights than the provisions of the Directive, existing national provisions and/or case law of the CJEU.

13. Practice and other relevant issues

The leaves described in Section 1 of this report are widely used in practice. A large problem in this practice however is the fact that maternity and subsequent parental leave is in general taken by women (the pay gap is still large, so if the family has to consider its financial situation, the logical consequence is that it is usually the woman with the lower wages that takes parental leave). According to recent statistics, 98 % of people who receive parental allowance are women.⁹⁶ Women are generally also the ones who take leave to care for a sick child. This results in employers being hesitant to hire women in their fertile years, since they are not considered to be very reliable employees.

Also, employers in general are not very much accustomed to taking the issue of harmonising family and working life into consideration and prefer employees who do not cause problems as a result of such reconciliation. It is mainly women who are confronted with

⁹⁶ Data for 2010 and 2011 available at: [http://www.czso.cz/csu/2012edicniplan.nsf/t/F000369233/\\$File/141312556.pdf](http://www.czso.cz/csu/2012edicniplan.nsf/t/F000369233/$File/141312556.pdf), accessed 10 April 2014.

this mentality. This is also a result of the lengthy maternity and parental leave (and of the dramatic lack of available places in public childcare facilities for children under three) and the high degree of protection against dismissal during these forms of leave.

At national level, there are no significant positive action measures to promote a more balanced share of family responsibilities between both parents in relation to leaves. There are only few employers who try to support a good balance, and some NGOs aim especially at awareness raising.

DENMARK – Ruth Nielsen

1. Context

In Denmark, statutory provisions on discrimination related to pregnancy and maternity, maternity leave, paternity leave, parental leave and adoption leave are mainly found in the Equal Treatment Act, which contains a ban on discrimination on grounds related to pregnancy and maternity, maternity leave, paternity leave, parental leave and adoption leave, and in the Maternity, Paternity and Parental Leave and Benefit Act (in Danish: Barselloven) which entered into force on 3 July 2006. In addition, the force majeure clause in the Parental Leave Directive (96/34/EC,⁹⁷ repealed and replaced by 2010/18/EU) has been implemented in the Act on Employees' Rights to Leave for Special Family-Related Reasons, which entered into force on 1 April 2006.⁹⁸ The Maternity, Paternity and Parental Leave and Benefit Act⁹⁹ provides for two kinds of rights for parents: right to absence from work and right to maternity, paternity or parental leave benefit from public funds. Parents are only entitled to wages during absences related to pregnancy and parenthood if such a right follows from a collective agreement or an individual employment contract. Wages usually include contributions to a pension fund. If the parent is only entitled to the benefit and not to wages he/she will not earn pension rights during absences related to pregnancy. In 2006, the rules on the right to absence from work on grounds of maternity, paternity and parenthood were moved from the Equal Treatment Act to the Maternity, Paternity and Parental Leave and Benefit Act. The substantive content of the rules on maternity, paternity and parental leave and benefit was not changed.

Under the present rules, parents are, between them, entitled to 52 weeks of leave in connection with pregnancy and childbirth on full benefit, which for most workers is considerably lower than full pay. The 52 weeks firstly include maternity leave, to commence four weeks before the expected confinement and lasting until 14 weeks after the birth of the child, secondly paternity leave for two weeks, and thirdly parental leave for 32 weeks. Maternity leave can only be taken by the mother, and paternity leave can only be taken by the father. In the maternity leave period, the father is entitled to two weeks' paternity leave. Paternity leave is available to both mothers and fathers, and there is no childcare leave in Denmark.

After 14 weeks after the birth of the child have elapsed, the parents are entitled to 32 weeks of parental leave benefit, which they can share as they please. They are each entitled to absence from work for 32 weeks but they will only receive benefits for a period of 32 weeks. There are possibilities of extending the parental leave period by accepting a reduced benefit and also possibilities of postponing the leave period until later. Pregnancy/maternity/paternity-related benefits from public funds are equal to the benefits for unemployed or sick persons. Childcare facilities are mainly tax-financed in Denmark. Public childcare is a public service of general economic interest financed primarily via taxes. Most

⁹⁷ Council Directive 96/34/EC of 3 June 1996 on the Framework Agreement on parental leave concluded by UNICE, CEEP and the ETUC OJ L 145 of 19 June 1996, pp. 4-9.

⁹⁸ Act on Employees' Rights to Leave for Special Family-Related Reasons (*Lov om lønmodtageres ret til fravær fra arbejde af særlige familiemæssige årsager*), Act no. 223 of 22 March 2006.

⁹⁹ Consolidation Act No. 872 of 5 March 2013 on Maternity, Paternity and Parental Leave and Benefit.

Danish children of pre-school age attend public childcare facilities. There is no legislation specifically related to the labour market providing for support for childcare facilities.

There is a rule on adoption leave in Section 8 of the Maternity, Paternity and Parental Leave and Benefit Act. Prospective adoptive parents who reside abroad to receive a child each have a right to be absent from work for up to 4 weeks before receiving the child. The child is considered to have been received by the parents when the formal conditions to return home with the child are met. Prospective adoptive parents who are to receive an adopted child in Denmark, are entitled to a leave for up to 1 week prior to receiving the child, if the child is not already residing in the adopter's home. In the first 14 weeks after receiving the child one of the adopting parents at a time is entitled to leave. There is a right to simultaneous absence for the parents for 2 consecutive weeks. The right to absence under parental leave, according to Section 8 Subsection 7, can start in the first 14 weeks after receiving the child. Subsection 7 provides: After the 14th week after receiving the child adopters have the right to absence from work during parental leave according to Sections 9 and 10, i.e. the normal rules on parental leave.

Under the present Danish rules on parental leave the father and mother can share the paid parental leave of 32 weeks as they please. If they want the mother to take the whole leave and the father to take no parental leave at all, they are free to do so. In practice women make much more use of parental leave than fathers. When the present Danish Government took office in September 2011 it announced the intention to present legislation earmarking 3 months of the parental leave to men, so that men obtained a right to take 3 months of parental leave. The mothers' right to parental leave was reduced accordingly. If the father chose not to use his right, the entitlement to parental leave was lost and could not be transferred to the mother. At the beginning of September 2013, however, the Government announced that it no longer intended to present such legislation, indicating that earmarking part of the parental leave to be used by men risked reducing the length of the total parental leave taken by parents because some men were expected not to be willing to use their entitlement to the 3-month parental leave.

2. Implementation of Directive 2010/18

The Act on Equal Treatment between Men and Women as regards Employment and Occupation¹⁰⁰ was amended with effect from 8 March 2013¹⁰¹ in order to implement Directive 2010/18/EU of 8 March.

The amendment Act entitles parents to ask for flexible working arrangements when returning after a break due to parental leave. In addition, the law specifies that the protection of pregnancy, childbirth or adoption not only applies to dismissal, but also includes less favourable treatment, and that the rules on burden of proof also apply to this situation. At the same time it states that less favourable treatment obliges the employer to pay compensation.

Denmark has not drawn up or published tables to illustrate the correlation between Directive 2010/18/EU and transposition measures in Denmark.

3. Purpose and scope (Clause 1)

The Danish implementing legislation is applicable to both the public and the private sector.

The scope of the Danish implementing legislation includes contracts of employment or employment relationships related to part-time workers, fixed-term contract workers or persons with a contract of employment or employment relationship with a temporary agency.

¹⁰⁰ Consolidated Act No. 645 of 8 June 2011 with later amendments.

¹⁰¹ Act No. 217 of 5 March 2013.

4. Parental leave (Clause 2)

The total duration of leave in connection with pregnancy and childbirth is – as mentioned above – 52 weeks on full benefit, which for most workers is considerably lower than full pay. The 52 weeks firstly include maternity leave, to commence four weeks before the expected confinement and lasting until 14 weeks after the birth of the child, secondly paternity leave for two weeks, and thirdly parental leave for 32 weeks. Maternity leave can only be taken by the mother, and paternity leave can only be taken by the father. In the maternity leave period, the father is entitled to two weeks of paternity leave. Parents are entitled to 32 weeks of leave of absence each, but they will only receive benefits for 32 weeks between them. The duration of parental leave has not been revised with the entry into force of Directive 2010/18. There is no difference in the duration of parental leave in the public sector and the private sector.

The child's maximum age for the parent to be entitled to parental leave is 8. The age limit is the same for adopted children.

The right to parental leave as a right to absence from work is individual for each of the parents. The right to benefits is shared. If one of the parents – for example the mother – takes 32 weeks of parental leave with benefits, the other parent – the father – can only take 32 weeks of leave of absence with no benefits.

Parental leave is (probably) not available in case of surrogacy which – although not unlawful in Denmark – results in a very insecure legal position, in particular for a woman who tries to become the legal mother to a child carried by another woman. Under Section 31 of the Children Act an agreement that a woman who gives birth to a child after birth shall surrender the baby to someone else, is invalid. Under Section 33 of the Adoption Act help must not be given or received in order to make a connection between a woman and another who wants the woman to give birth to a child for the adoptive mother.

5. Modalities of application (Clause 3)

Parental leave can take the form of full-time or part-time leave. Under Section 11 of the Act on Maternity, Paternity and Parental Leave and Benefit employed workers have the right to resume work and defer at least 8 weeks and a maximum of 13 weeks of the absence of leave in accordance with Section 9 of the Act. The right to postpone absence can only be used by one of the parents. The deferred absence shall, when exercised, be used in a continuous period. The deferred right to absence must be exercised before the child reaches the age of 9 years. Section 12 of the Act on Maternity, Paternity and Parental Leave and Benefit provides that in agreement with the employer, an employed worker may return to work full time or part time. In connection with the agreement for the partial resumption of work during absence it can be agreed that the right to absence is extended for a period corresponding to time during which the work has been resumed. In connection with the agreement on returning to work full time during the absence it can be agreed that the right to absence is deferred for a period corresponding to the time in which the work has been resumed. If an employee resigns before the postponed right to absence is utilised, the right to absence is subject to an agreement between the employee and the new employer on the deferred right to absence. The right to return to work does not include the mother's absence during the first 2 weeks after birth.

The various available options thus allow taking into account the needs of both employers and workers.

Under Section 16 of the Act on Maternity, Paternity and Parental Leave and Benefit there is a notice period of 16 weeks.

Under Section 2 of the Act on Maternity, Paternity and Parental Leave and Benefit the right to absence under the Act applies to all parents with no qualifying period. The right to maternity, paternity or parental leave benefit, on the other hand, only exists if the person claiming such a benefit has fulfilled a qualifying period in accordance with Section 27 for employees or Section 28 for the self-employed.

Section 27 of the Act on Maternity, Paternity and Parental Leave and Benefit stipulates the employment requirements for employees and states that an employee is entitled to

maternity benefits from Payment Denmark (UdbetalingDanmark; the Danish authority which pays the benefit), where the employee:

- has been attached to the labour market continuously for the last 13 weeks before the period of absence begins and during this period has been employed for at least 120 hours;
- would have been entitled to unemployment benefits or a benefit in its stead under the Act on Unemployment Insurance, if he or she had not been entitled to benefits under this Act;
- within the past month has completed vocational training for at least 18 months;
- is in work training in a programme that is regulated by or under the Act; or
- is employed in a flexible job according to Section 70(c) of the Act on Active Employment.

The calculation of the 13-week period above includes periods that the employee:

- has worked as an employee;
- has worked as a self-employed person immediately prior to working as an employee and the company has met the employment requirement according to Section 28;
- is receiving benefits under the Act on Sickness Benefits or benefits under this Act;
- has received unemployment benefits or allowance in lieu thereof;
- is on annual leave with pay or holiday pay;
- has received compensation in a notice period from the Employees Guarantee Fund; or
- is the subject of a labour dispute.

For self-employed persons Section 28 Act in the Maternity, Paternity and Parental Leave and Benefit grants the right to maternity benefits, subject to the condition that they within the last 12 months have been self-employed for at least half the normal contractual working week for at least 6 months, of which the last month immediately prior to the absence.

The condition for the payment of maternity benefits is that the employment requirement in Sections 27 or 28 have been met at the start of a period of absence.

In case of successive fixed-term contracts with the same employer (as defined in Council Directive 1999/70/EC on fixed-term work¹⁰²), the sum of these contracts are taken into account for the purpose of calculating the qualifying period.

The employer cannot require postponement of the leave period. There are no special arrangements for small firms.

There are no special rules/exceptional conditions for access and modalities of application of parental leave to the needs of parents of children with a disability or a long-term illness. However, it should be noted that under the Directive, Member States may authorise modalities for parents with disabilities. Denmark has until now chosen not to use this possibility. In accordance with usual Danish practice it is up to the parties to collective agreements rather than the legislator to provide for mechanisms to promote that the maintenance of contact between workers and employers during the period of leave. In the view of the expert, this is compatible with the minimum requirements of the Directive.

6. Adoption (Clause 4)

There are no additional measures to address the specific needs of adoptive parents.

7. Employment rights and non-discrimination (Clause 5)

The prohibition against direct and indirect sex discrimination covers discrimination on ground of pregnancy, maternity, paternity or parental leave. Section 1, Subsection 2 provides that direct discrimination on grounds of sex includes any form of negative discrimination in relation to pregnancy and of a woman during 14 weeks of leave after birth.

Section 9 of the Equal Treatment Act provides that it is prohibited for an employer to dismiss an employee because she/he has claimed the right to be absent or has been absent

¹⁰² Council Directive 99/70/EC of 28 June 1999 concerning the Framework Agreement on fixed-term work concluded by ETUC, UNICE and CEEP OJ L 175/43 of 10 July 1999.

under the Maternity, Paternity and Parental Leave and Benefit Act Sections 6-14 or otherwise on account of pregnancy, childbirth or adoption.

Rights acquired or in the process of being acquired by the worker on the date on which parental leave starts are maintained as they stand until the end of the parental leave. The employment contract continues for the period of the parental leave. There is continuity of the entitlements to social security under the different schemes during the period of parental leave.

Parental leave is only remunerated by the employer if it follows from an individual or collective agreement. Absence due to childbirth can therefore result in women accruing smaller pensions than men. The social security system in Denmark provides for an allowance during maternity, paternity and parental leave. It amounts to approximately EUR 545 (DKK 4 075) per week.

8. Return to work (Clause 6)

Section 8a of the Equal Treatment Act provides that parents who have exercised the right to absence according to the Maternity, Paternity and Parental Leave and Benefit Act Sections 6-14 have the right to return to the same or an equivalent job that is no less favourable to them, and to benefit from any improvement in working conditions to which they would have been entitled during their absence.

As a result of the implementation of Directive 2010/18 it was added in Section 8(a) in the Equal Treatment Act that parents are entitled to ask for flexible working arrangements when returning after a break due to parental leave. However, employers are under no obligation to meet the wishes of the worker.

In addition, the law specifies that the protection of pregnancy, childbirth or adoption, not only applies to dismissal, but also includes less favourable treatment, and that the rules on burden of proof also apply to this situation. At the same time it states that less favourable treatment obliges the employer to pay compensation. There is no condition of a minimum period of employment with the same employer.

There are no specific mechanisms to promote/ensure that workers and employers maintain contact during the period of leave and make arrangements for any appropriate reintegration measures.

9. Time off from work on grounds of force majeure (Clause 7)

Workers are entitled to time off from work on grounds of force majeure for urgent family reasons in case of sickness or accident. The force majeure clause in the Parental Leave Directive has been implemented in the Act on Employees' Rights to Leave for Special Family-Related Reasons, which entered into force on 1 April 2006, see above under Context. The conditions of access to such time off from work or more detailed rules have not been further specified. The entitlement to such time off from work has not been limited to a certain amount of time per year and/or per case.

10. Final provisions (Clause 8)

In the view of the expert, the minimum requirements of Directive 2010/18 have been met. Danish law is more favourable to the workers in regard to the length of parental leave and economic compensation than what is required by EU law.

11. Sanctions (Article 2)

The available sanctions are those laid down in the Equal Treatment Act, i.e. compensation and overruling of a dismissal. In the expert's view these sanctions are effective, dissuasive and proportional.

12. Case law

The expert is not aware of any Danish case law (or legal provision) relating to parental, adoption and/or time-off leave that is contrary to the relevant case law of the CJEU. There is no Danish case law relating to parental, adoption or time-off leave which provides more favourable rights than the provisions of existing Danish legislation.

13. Practice and other relevant issues

The types of leave described above are often used in practice, in particular by mothers. There are no positive action measures in Denmark to promote more balanced sharing of family responsibilities between both parents in relation to these leaves.

The expert is not aware of any relevant gaps in Danish law in this field.

ESTONIA – Anu Laas

1. Context

In Estonia the duration of pregnancy leave, maternity leave, paternity leave, child-care leave, and child leave is regulated by the Employment Contracts Act (ECA), effective since 1 July 2009.¹⁰³ In daily life people use the term ‘child-care leave’ instead of ‘parental leave’.¹⁰⁴

The three-year job-protected child-care period (parental leave) is a long leave, which is quite typical for Member States in Eastern Europe. According to Article 62(1) of the Employment Contracts Act (ECA), a mother or father is granted parental leave at his or her request until the child reaches the age of three. Pregnancy and maternity leave for 140 days is granted to mothers and 70 days of leave to adoptive parents.

If a mother or father does not use the parental leave, the leave may be granted to the actual caregiver. This actual caregiver could be a grandparent or guardian, but they are required to be residents of the Republic of Estonia. Article 6(1)1 of the Social Tax Act (STA) lists special cases where social tax¹⁰⁵ is paid by the State and among them are persons on child-care leave: one of the parents, the guardian or the caregiver residing in Estonia and raising a child under the age of three residing in Estonia with whom a written foster-care contract has been entered into, or the person who uses parental leave instead of a parent and who is raising a child under the age of three. Stepparents and adoptive parents have the same rights.¹⁰⁶

2. Implementation of Directive 2010/18

In Estonia a right to paid maternity leave and to parental leave following the birth or adoption of a child has existed for decades. Debates have been held and changes made to the length and monthly compensation rate of parental leave. Paid paternity leave for ten days is a new measure for reconciling work and family.¹⁰⁷

¹⁰³ Employment Contracts Act (ECA), RT I 2009, 5, 35.

¹⁰⁴ H. Biin et al. *Eesti vanemapuhkuste süsteemi analüüs (Estonian parental leaves system)* (in Estonian) Tallinn, Praxis 2013, available at: http://www.sm.ee/fileadmin/meedia/Dokumendid/Sotsiaalvaldkond/Uuringud/anal%C3%BC%C3%BCsid_ja_rahvusvahelised_kogemused/L%C3%B5plik_vanempuhkuste_aruanne_PRAXIS.pdf, accessed 2 April 2014. Biin et al. have studied the parental leave system in Estonia and use the term ‘parental leaves’, which includes maternity leave, adoption leave, child-care leave, paternity leave, child leave, child leave without pay and leave to care for children who are ill.

¹⁰⁵ Social tax is a financial obligation which is imposed on taxpayers to obtain the revenue required for pension insurance and state health insurance.

¹⁰⁶ Social Tax Act (STA), RT I 2000, 102, 675.

¹⁰⁷ According to Article 60 of the ECA a father has the right to a total of ten working days of paternity leave in the two months before the estimated date of birth determined by a doctor or midwife and in the two months after the birth of the child (entered into force 1 January 2013).

The question of reconciliation of work and family life is explicitly provided for in the GEA from 2004. Article 11(1)(3) of the GEA provides that to promote equal treatment of men and women, employers have to create working conditions which are suitable for both women and men and support the combination of work and family life, taking into account the needs of employees.

Estonia had previously fulfilled the requirements of the Parental Leave Directive, except the provisions regarding the protection of temporary agency workers. On 25 January 2012, amendments were made to the ECA and associated Acts in order to transpose the Temporary Agency Work Directive and the Parental Leave Directive. The amendments paid attention to the contractual and equal treatment issues in the case of temporary agency work. For example, the amendments stipulate that the same childcare services have to be guaranteed to temporary agency workers as those that are guaranteed to comparable workers of the business for which they work.

The table of proposals from public consultations on the respective Directives, including Directive 2010/18, was annexed to the explanatory memorandum of Draft Act 215 SE.

The protection of pregnant women and employees with parental obligations in an employment relationship could be more self-evident, but this is more a question of company culture, not a legal issue.

3. Purpose and scope (Clause 1)

The national legislation on pregnancy, maternity, parental and child-care leave is applicable to both the public and the private sector. The type of employment contract and the working time do not affect the rights of taking the aforementioned leaves. The compensation for the wage loss is managed by the State. An employee has the right to compensation for the period of pregnancy and maternity leave in accordance with the Health Insurance Act (HIA), for parental leave in accordance with the Parental Benefits Act (PBA), and to a child-care allowance in accordance with the State Family Benefits Act (SFBA).¹⁰⁸

The purpose of the Parental Benefits Act (PBA) is to maintain, by granting state support, the previous income for persons whose income decreases due to the raising of a child, and to support the reconciliation of work and family life. Persons who have not received income shall be ensured with an income to the extent of the benefit rate.¹⁰⁹ According to Article 2(1) of the PBA, permanent residents of Estonia and aliens residing in Estonia on the basis of a temporary residence permit or temporary right of residence have the right to receive these benefits.

The purpose of the SFBA is to ensure that families with children receive partial reimbursement of expenses relating to the care, raising and education of children.

4. Parental leave (Clause 2)

Job-protected parental leave is available until the child reaches the age of three. Entitled 'parents' are the actual caregivers. Maternity leave and paternity leave are individual leaves. Parental leave could be shared among the parents, but cannot be used simultaneously by both parents. For the reconciliation of work and family the parental leave is paid for up to 435 days. This cannot be split up into different periods. Paid leave should be used only during the period immediately following maternity leave and cannot be 'saved' for later while the child is still under three.

The Article 59 of the ECA stipulates that a woman has the right to a pregnancy and maternity leave of 140 calendar days and an adoptive parent has the right to an adoptive

¹⁰⁸ Health Insurance Act (HIA), RT I 2002, 62, 377; Parental Benefits Act (PBA), RT I 2003, 82, 549, entry into force on 1 January 2004; State Family Benefits Act (SFBA), RT I 2001, 95, 587.

¹⁰⁹ If the parent did not work during the preceding year the parental benefits are paid at the designated benefit base rate, which in 2014 is EUR 320 per month (annual government regulation). If the parent worked during this year but his or her average income was lower than the minimum wage, the benefits are paid at the minimum wage rate, which in 2014 is EUR 355 per month.

parent leave for 70 days. After maternity leave, the mother or the father can take paid parental leave. The share of fathers who take parental leave is about 6 %.¹¹⁰ Paid parental leave could also be used by the actual caregiver. Parental leave is transferable from one parent (or grandparent) to the other.

There is a non-transferable paternity leave. A father has the right to receive a total of ten working days of paid paternity leave in the two months before the estimated date of birth determined by a doctor or midwife and the two months after the birth of the child.

The duration of parental leave in the public sector and the private sector is the same. Surrogacy is banned in Estonia. According to Article 132 of the Penal Code (PC), surrogate motherhood will be punished by a pecuniary penalty.¹¹¹ It is not the surrogate mother who is punished, but it is easier in principle to punish the physician performing the in-vitro fertilisation (IVF) knowing that the new-born baby will be given to another woman. Article 83 of the FLA states that the mother of a child is the woman who gives birth to the child. Members of Parliament have ordered an assessment and analysis of surrogate mothering.¹¹²

5. Modalities of application (Clause 3)

Usually one of the parents or the actual caregiver takes the parental leave, it is impossible to share the leave. The person on leave can work at the same time, but this is not encouraged during the paid parental leave period (parental benefits are paid for 435 days after maternity leave), because earnings are deducted from the benefits (income penalty). There is not possible to use these paid parental leave days (435) during a three year parental leave period. The right to paid parental leave expires after the child is one and half years old.

There is no specially reserved fathers' leave during the parental leave period. The notice period is 14 days. Article 62(2) of the ECA stipulates that parental leave may be used in one part or in several parts every year. It is presumed that an employee notifies the employer of their intention to take parental leave or interrupt their parental leave 14 calendar days in advance, unless the parties have agreed otherwise. It has been stated that such a short notice period and staff replacement when the employee is on parental leave is quite demanding from the employers' point of view.¹¹³

The time of the annual holidays is determined by the employer, taking into account the requests of employees, but persons with parental obligations have the right to demand annual holidays at a suitable time. 'Demand' is too strong a word for employment relationships, however; usually the employer tries to take employees' holiday preferences into account.

A mother or father of a disabled child has the right to additional child leave of one working day per month until the child reaches the age of 18, which is remunerated for on the basis of the average wages. There is also the possibility to use child leave without pay up to ten working days every calendar year. The latter possibility is offered to a mother and father who are raising a child of up to 14 years of age, or a disabled child aged up to 18 years.

6. Adoption (Clause 4)

Child-care leave may be used by one person at a time. Article 65(2) of the ECA states that the actual caregiver has the right to the child-care leave. Article 161 of the Family Law Act (FLA) stipulates that the adopted child acquires the legal status of a child of adoptive parents or parent. The biological parent's custody rights are suspended from the moment of granting consent for adoption and an adoptive parent is required to maintain the child. An adoptive

¹¹⁰ The share of fathers on parental leave was 6.8 % in March 2010, and 5.6 % in March 2012. Data from the Social Insurance Board *Budget and Statistics* (only in Estonian), <http://www.sotsiaalkindlustusamet.ee/eelarve-ja-statistika-6/>, accessed 10 April 2014.

¹¹¹ Transfer of a foreign ovum, or an embryo or foetus created therefrom to a woman whose intention to give away the child after birth is known is punishable by a pecuniary punishment (Article 132 of the PC).

¹¹² L. Oja 'Reproduktiivõigused – asendusemadus Eestis' ('Reproductive Rights – Surrogacy in Estonia'), *Riigikogu Kantselei õigus- ja analüüsisiosakond, Teemaleht 16*, 9 September 2013.

¹¹³ Biin et al. (2013).

parent of a child under 10 has the right to adoptive parent leave of 70 calendar days as of the date of the entry into force of the court judgment approving the adoption; this leave is compensated from health insurance sources.¹¹⁴ If the child is under three, ordinary parental leave is also available to the adoptive parents.

7. Employment rights and non-discrimination (Clause 5)

An employer shall ensure the protection of employees against discrimination, follow the principle of equal treatment and promote equality in accordance with the Equal Treatment Act (ETA) and Gender Equality Act (GEA). Nowadays, employees stand more actively for their rights, and the Gender Equality and Equal Treatment Commissioner and the Labour Dispute Committee at the Labour Inspectorate are now well-known for obtaining win-win results regarding labour relationships.

The parental leave period is job-protected. During parental leave, the contract of employment is suspended and not terminated. Withdrawal of an employment contract is prohibited. Employees on maternity and parental leave cannot be fired in case of a decrease in work volume or reorganisation of the enterprise. In case of redundancies, employees on maternal and parental leave must be kept in employment. But in case of bankruptcy or cessation of the activities of the employer, employees with a child under three can also be dismissed.

During the period of maternity and parental leave, social taxes are paid by the State. Compensation of lost wages during a pregnancy and maternity leave period is administered through the Health Insurance Fund and for the parental leave period by the Social Insurance Board.

8. Return to work (Clause 6)

Clause 6 is formulated in soft terms by the Directive.¹¹⁵ In Estonia, the unionisation rate is low, employer-employee relations are agreed on a personal basis in the majority of cases. Flexible working time arrangements are rare, atypical opening hours of child-care facilities are allowed (e.g. evening groups), but are a complicated issue. General legal protection exists (it is prohibited for employers to discriminate against an employee with parental obligations), but daily practice is often very different. Many projects have targeted employers to increase awareness regarding flexible work. Even case law has stated that employers could refuse to recruit a job applicant who has applied for special working hours due to family obligations.¹¹⁶

Suitable working conditions and working time in connection with parental obligations are agreed between the employee and the employer. There is no special legal protection for those returning from leave, which is available for pregnant employees.¹¹⁷ Even business trips are not prohibited.¹¹⁸

An employee may exceptionally cancel an employment contract due to a personal reason, in particular if the employee's state of health or family duties do not allow him or her to perform the agreed work and the employer does not provide him or her with suitable work.

¹¹⁴ Article 61 of the ECA. Employment Contracts Act (ECA), RT I 2009, 5, 35.

¹¹⁵ 'The modalities of this paragraph shall be determined in accordance with national law, collective agreements and/or practice.'

¹¹⁶ The job applicant was said not to have been discriminated against, because comparable employees had worked long hours and evening shifts.

¹¹⁷ For example, if the employer cannot provide the pregnant employee with work corresponding to his or her state of health, the employee may temporarily refuse to perform the duties.

¹¹⁸ For comparison: 'A pregnant woman and an employee raising a child under three years of age or a disabled child may be sent on a business trip only with his or her consent.'

9. Time off from work on grounds of force majeure (Clause 7)

Taking days off due to urgent family reasons is possible on grounds of an individual agreement with the employer. It could be discussed with the employer how to deal with the official arrangements. Employees with a child under 14 have a right to paid and unpaid additional child-care leave every year. A mother or father who is raising a child under 14 or a disabled child under 18 has the right to child leave without pay of up to ten working days every calendar year.

Article 63(1) of the ECA allows the mother or father child leave each year, which shall be remunerated on the basis of the minimum wage established by the Government of the Republic for three working days if she or he has one or two children under 14 and for six working days if she or he has at least three children under 14 or at least one child under three. Article 64(1) of the ECA offers additional unpaid child-care leave. A mother or father who is raising a child under 14 or a disabled child under 18 has the right to child leave without pay of up to ten working days every calendar year.

10. Final provisions (Clause 8)

Much has been done for reconciling work and family and the parental leave scheme offers choices to take care of children and compensate for wage loss. Three years of job-protected leave have positive effects on family life, but also have a negative side, related to employers' human resource management and costs, and to women's lower career and employment prospects. Weak unions and unemployment as a persistent phenomenon have given employers more power in recruitment and work relationships. National law is in accordance with Directive 2010/18, but reconciling work and family policies could be more valued and developed.

On the other hand, people have made more attempts to reconcile work and family, and skilled workforce and professionals have more power in negotiations with employers. Employee-friendly employers and child-friendly municipalities have been introduced as best practices. Research results indicate that the child's position in the family has become more relevant and parenting practices are more child-oriented in the early 2000s than they were in the 1970s.¹¹⁹

11. Sanctions (Article 2)

Cancellation of the employment contract of a pregnant employee or an employee who has the right to pregnancy and maternity leave, and also of the employee who 'performs important family obligations' is void.¹²⁰ Upon unlawful cancellation of an employment contract, if the employment relationship continues, an employee has the right to demand compensation for damage, in particular wages not received. Reinstatement could be offered, but often these employees leave the employer. Reinstatement is accepted by these employees more often in the public sector, in the private sector this rarely occurs. If the court or labour dispute committee terminates an employment contract with an employee who is pregnant,¹²¹ who has the right to pregnancy and maternity leave or who has been elected as the employees' representative, the employer shall pay the employee compensation in the amount of six months of the employee's average wages. The court or labour dispute committee may change the amount of the compensation, considering the circumstances of the cancellation of the employment contract and the interests of both parties (considering mutual interests etc.).

Article 3 of the ECA (entered into force on 1 July 2009) provides that an employer shall ensure the protection of employees against discrimination, follow the principle of equal

¹¹⁹ D. Kutsar et al. 'Family Trends and Changing Parenting Practices in Estonia', *Cognition, Creier, Comportament/Cognition, Brain, Behavior*, 16/2, 2012 pp. 171-189.

¹²⁰ Article 92(1)1) and 92 (1)2) of the ECA.

¹²¹ See Articles 107 and 109 of the ECA.

treatment and promote equality in accordance with the ETA and GEA. Case law states that this applies to comparable employee(s) and not to the special protection of people with family obligations.

In 2013, the Labour Inspectorate received 2 965 complaints, 12 % of which by employers. Half of the complaints by employees related to pay or final payment, and every third complaint was related to the termination of an employment contract.¹²² In 2013 there were 17 unequal treatment claims and in 2012 the number of such claims was 23. Unequal treatment in connection to family obligations was one of the grounds for unequal treatment. Some employers received sanctions in connection with the violation of rights of an employee who was pregnant or who had a right to parental leave.

12. Case law

Pregnant employee could not be fired during probation period

On 11 February 2014 the Labour Dispute Committee at the Labour Inspectorate issued a decision which is important for pregnant employees. The Committee studied the labour dispute between an employer (ASK Teenus OÜ) and a former employee, who had been fired during her probation period (with a maximum duration of four months) after her notification that she was pregnant. The Labour Dispute Committee found that the cancellation of the employment contract with the pregnant employee during the probation period amounted to discrimination on grounds of sex. Article 92(1)(1-2) of the ECA states that an employer must not cancel an employment contract on the ground that the employee is pregnant, has the right to pregnancy and maternity leave, or performs important family obligations.

Pregnant woman's maintenance questioned

The Civil Chamber of the Estonian Supreme Court decided that pregnant women's maintenance by their unmarried partner is not obligatory, when the woman is entitled to some state and local benefits and 'additional monetary support is a bonus'.¹²³ The Court interpreted the social protection and support money for a mother as sufficient income and did not see the need for additional monetary support from the father of the child.¹²⁴

The claimant (the child's mother) asked the defendant (the father) to pay maintenance for a period of eight weeks before and twelve weeks after the birth of the child. Defendant said he did not believe the claimant should be provided with maintenance, because the claimant had sufficient means (paid maternity leave) to support herself during the aforementioned period. The county court dismissed the application. The Circuit Court disagreed with the position of the county court, and issued a new judgment. The defendant appealed to the Supreme Court.

The Supreme Court decided that Article 111(1) of the FLA is applicable only in cases where additional support is indispensable to the mother of the child. The case has not been closed and further discussions will be held in a lower court.

¹²² There is an upper limit to the monetary requirements for one case (EUR 10 000) for the Labour Inspectorate to proceed.

¹²³ Judgment No. 3-2-1-198-13, the Civil Chamber of the Estonian Supreme Court on 5 March 2014.

¹²⁴ This justification was not connected with free cohabitation, but with the existing income of the woman. Chapter 2 of the Family Law Act (FLA) includes a provision regarding maintenance in the case of the birth of a child.¹²⁴ Article 111(1) of the FLA stipulates that the father of a child is required to provide maintenance to the mother of the child eight weeks before and twelve weeks after the birth of the child. Secondly, there is a health insurance and other legal Acts supporting and compensating parental leave. A pregnant woman is entitled to health insurance and sick leave payment. Article 111(2) of the FLA declares that if a mother is unable to maintain herself due to a health disorder caused by pregnancy or childbirth, the father is required to provide maintenance to her until improvement of her state of health. The same applies if a mother is unable to earn an income because she takes care of a child. The obligation to provide maintenance commences not earlier than four months before the birth of a child and terminates three years after the child's birth.

13. Practice and other relevant issues

Parental leave could be shared among parents and actual caregivers. Karu points out that in spite of gender-neutral parental leave policies, parental leave operates as the mother's leave which is very seldom taken up by fathers.¹²⁵

Data show that the father's pay influences the taking of leave. Among benefit recipients at a minimum monthly wage level the share of fathers was the lowest, and out of all fathers who used the leave, every fifth father received the monthly parental benefits at the maximum rate, which in 2014 is EUR 2 378.25 per month. The upper limit of the amount of the parental benefits is three times the national average salary from the year before (according to Statistics Estonia).

Three years of child-care leave tends to cause some problems for the person taking the leave (feeling of isolation, loss of practical skills and qualification, need for training) and for the employer (cost of replacement, finding a substitute, training the substitute, training the employee upon return). To encourage employers to take positive actions and to praise family-friendly employers, several competitions and nominations have been organised.

Karu points out that the generous income-related parental benefits scheme encourages mothers and fathers to take up work before having a child in order to earn higher parental benefits. Although both parents are eligible for parental leave, the gender-neutral leave with family entitlement has produced a gendered impact everywhere and thus put women into the traditional care provider's position.

Biin et al. have found that the current parental leaves' system needs a revision and increased flexibility for reconciling work and family for the person taking the leave and for employers, and to promote stronger involvement of fathers to take up the leave.¹²⁶

As the second period of the leave (which can be taken until the child reaches the age of three) is not compensated by the State, the person taking the leave would like to be employed on a part-time or full-time basis, but there is a shortage of nurseries for children under two. The Social Welfare Act (SWA) defines 'social service' as a non-monetary benefit which contributes towards the ability of a person or family to cope.¹²⁷ Social services are administered by the rural municipality or city government. Article 10 of the SWA lists these social services, and also includes childcare services, ending the list with the words 'other social services needed for coping'.

FINLAND – Kevät Nousiainen

1. Context

The Finnish system of family-based leaves consists of maternity, paternity and parental leave, during which an employee is entitled to income-related social benefits and at the end of which employees are entitled to return to their former duties. Some collective agreements grant the employee pay during a family-based leave period, most often during maternity leave. In these cases, the employer is entitled to the social benefits accruing during the time that the employee is entitled to pay. Only part of the paternity leave may be taken during maternity and parental leave, so that most of paternity leave may only be taken outside the period that mother uses her right to a family-based leave. The provisions on parental leave also apply to registered partnerships (same-sex couples).

¹²⁵ M. Karu *Fathers and parental leave: slow steps towards dual earner/dual carer family model in Estonia* (Tartu Ülikool) Tartu: Tartu University Press, 2011; http://dspace.utlib.ee/dspace/bitstream/handle/10062/18103/karu_marre.pdf?sequence=1, accessed 1 April 2014.

¹²⁶ H. Biin et al. *Eesti vanemapuhkuste süsteemi analüüs (Estonian parental leaves system)* (in Estonian) Tallinn, Praxis 2013, available at: http://www.sm.ee/fileadmin/meedia/Dokumendid/Sotsiaalvaldkond/Uringud_anal%C3%BC%BCsid_ja_rahvusvahelised_kogemused/L%C3%B5plik_vanempuhkuste_aruanne_PRAXIS.pdf, accessed 2 April 2014.

¹²⁷ The Social Welfare Act (SWA), RT I 1995, 21, 323.

After parental leave, an employee is further entitled to a leave, known as home-care leave, until the child is three years old. This home-care leave is considered a form of parental leave, the difference between the two being the pay. Home-care leave does not entitle the parent on leave to income-related social benefits, only to state flat-rate benefits which may be complemented by municipal benefits. The employee is entitled to return to his or her job after the home-care leave. Although the flat-rate benefits are relatively small, the home-care leave is popular, and causes the typical pattern of family-related absences from work in Finland: mothers of small children tend to be absent from work for longish periods, but both mothers and fathers work full time when they are at work. The home-care leave is seen as an alternative to the right to municipal day care, which the municipalities often try to minimise by offering extra benefits on top of the state benefits to persuade families to take the option of taking care of their children at home.

Further, parents are entitled to stay at home to take care of their children under ten who are ill for a maximum of four days at a time. There is no total maximum. Adoptive parents of a child younger than seven have a right to parental leave. The norms on parental leave in the context of adoption are adapted to the special circumstances, so in this sense, the right to leave for adoptive parents is not quite an autonomous leave. The maternity, paternity and parental leave and home-care leave provisions in their original form precede Finland's membership of the EU, and the main system of family-based leaves has only undergone small amendments in the last three decades.

The provisions on family-based leaves are contained in Chapter 4 of the Employment Contracts Act,¹²⁸ and they cover both private and public sector employment. Under Chapter 4, Section 1, employees are entitled to leave from work during maternity, special maternity, paternity and parental benefit periods referred to in the Sickness Insurance Act.¹²⁹ This means that any amendments of the family-based leave benefits automatically change the leave periods under the Employment Contracts Act. The other pieces of legislation on employment, such as the State, Municipal and Church Employment legislation follow the provisions of the Employment Contracts Act. Pay during the maternity leave is not obligatory, but is paid where stipulated in a collective agreement. In these cases the benefits under the Sickness Insurance Act are paid to the employer during the period that the employee receives pay during maternity leave. The provision on home-care leave is under Chapter 4, Section 3 of the Employment Contracts Act.¹³⁰

2. Implementation of Directive 2010/18

The impact of the national family-based leave system has been under scrutiny for the last decade, as parents do not share the leaves in a balanced manner. Mothers take more than their share of leave, which leads to long absences from work as described above. For example, the OECD has criticised the Finnish system for this reason.¹³¹ Several studies have shown that mothers' pay development is harmed by the long absences from work. A longer paternity leave and its more flexible use have led to the introduction of the so-called 'father's month', and the level of the parental leave benefits has been raised to 75 % of income from work for the first 30 days of parental leave in order to compensate for the loss of income, which was assumed to diminish fathers' willingness to take parental leave (due to their income being higher on average than the mothers' income).¹³²

¹²⁸ (55/2001).

¹²⁹ (2004/1224). The length of benefit periods is *de facto* defined through the provisions of this Act.

¹³⁰ The length of home-care leave is also defined in the Employment Contracts Act, because the flat-rate benefit is not specified as an income-related benefit under the Sickness Insurance Act. This flat-rate benefit is EUR 341 for the first child and EUR 103 for an additional child younger than three. An additional benefit is paid to those with a low income, calculated on the basis of the family income and the number of family members.

¹³¹ Government Bill 111/2012 vp *Hallituksen esitys eduskunnalle sairausvakuutuslain muuttamisesta, lasten kotihoidon ja yksityisen hoidon tuesta annetun lain 4 ja 6 Section:n muuttamisesta sekä lastenpäivähoidosta annetun lain 11 a Section:n muuttamisesta*, refers to the OECD's criticism as one of the motivations for legal amendment, p. 5.

¹³² Government Bill 111/2012 vp p.5.

The implementation of Directive 2010/18¹³³ took place simultaneously with one more amendment of the Finnish family-based leave system. The Finnish Government assumed that the parental leave system as it was then already fulfilled the requirements of the new Directive,¹³⁴ taking into account the family-based leave system as a whole. According to the Government Programme,¹³⁵ the Finnish system was to be amended so that the family-based leave earmarked for the father would increase and the use of this leave would become more flexible. The Finnish Social Partners had produced a framework agreement in the fall of 2011 which also stated that the family-based leave system was to be amended according to the Government Programme. The amendment carried out in 2012 therefore was not directly connected to the implementation of the new Parental Leave Directive. No tables have been published on the correlation between the Directive and transposition measures.

3. Purpose and scope (Clause 1)

National legislation on family-based leaves (Employment Contracts Act and Sickness Insurance Act) is applicable both in the public and the private sector. It even goes beyond employment, as the leave system also covers persons who are self-employed, agricultural entrepreneurs or other entrepreneurs or persons who are in a leading position in an enterprise and therefore do not fall under the Employment Contracts Act, or even have no income from a gainful occupation. Eligibility for parental benefits is based on being insured under the national sickness insurance system. Persons who do not have a minimum income that entitles them to income-related benefits receive minimum flat-rate benefits under Sickness Insurance Act Chapter 7, Section 3. This means that part-time workers, fixed-term workers and persons employed by a temporary agency are covered under the benefit system. The amount of daily benefits on the basis of income is calculated as 70 % of the taxed annual income divided by 300 up to a threshold of EUR 32 892, and from that 40 % up to EUR 50 606, and above that 25 %. The maternity benefits are more favourable than the ordinary sickness benefits for the first 56 weekdays, as the mother receives 90 % of her work-based income during that period, instead of the 75 % paid as sickness benefits (Section 1(2)1 of Chapter 11). The benefits are capped at EUR 50 602, however, above that income the mother receives 32.5 % of her former income. The higher level of benefits was introduced by amendment of the Sickness Insurance Act in 2010.¹³⁶ The aim of the amendment was not only to provide a higher level of income for mothers, but to reduce the losses of employers, as collective agreements often stipulate pay for the first part of the maternity leave. In these cases the employer receives the maternity benefits. For the first 30 days of paternity leave that are taken after maternity leave, and for parental leave for the father, the income is calculated at 75 % of the former income.¹³⁷ The increase in benefits aims to enhance the use of parental leave by fathers, and is to be considered positive action.

The main rule that determines the amount of family-based benefits is therefore taxed income (Chapter 11, Section 3). The insured person may, however, show that his or her income before the entitlement to benefit was higher than the taxed income immediately before family-based leave, and if the level of income has been exceptionally low during the period of taxation because of unemployment, disability or some other similar reason, another six-month period up to the beginning of the year before the entitlement may be taken into account (Chapter 11, Section 4). The flexibility in the choice of the income period to be taken into account is relevant especially for persons who have had a period of unemployment between fixed-term employment relations, and for persons whose previous family-based leave has had an impact on his or her income.

¹³³ Council Directive 2010/18/EU of 8 March 2010 implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC OJ L 68 of 18 March 2010, pp. 13-20.

¹³⁴ Government Bill 111/2012, p. 9.

¹³⁵ Prime Minister Jyrki Katainen's Government Programme, 17 June 2011.

¹³⁶ (2010/1142).

¹³⁷ Chapter 11, Section 1 of the Sickness Insurance Act.

4. Parental leave (Clause 2)

The right to parental leave and benefits begins immediately after the maternity leave period (Chapter 9, Section 8 of Sickness Insurance Act). The parental leave period is 158 weekdays (Monday – Saturday, corresponding to approximately 26 weeks or 6 and a half months).¹³⁸ When more than one child is born, the period is 60 weekdays longer for each additional child. There is no difference between public and private sector employment as to these issues.

Although the parental leave has been available for fathers for decades, relatively few fathers use their parental leave. The ‘father’s month’ was introduced in 2006 in order to improve the gender balance in parenting. At first, the father got 12 weekdays extra after he had used a period of parental leave. Still, the father’s month which required that the father took independent care of the baby was not very popular. In 2009, it was estimated that circa 60 000 children were born in Finland, and that 49 000 fathers took paternity leave at the time that the mother was also on family-based leave. On the other hand, fewer than 3000 fathers used the ‘father’s month’ at the end of the parental leave, to take care of a baby after the mother had returned to work. In order to improve the gender balance, 12 more weekdays were added to the father’s month in 2009, provided that the father uses 12 days of paternity leave at the end of the parental leave period.

The provision on the length of the paternity leave was amended again in 2012. Now, paternity benefits are paid for 54 weekdays, but so that benefits may be paid only for 18 weekdays during the maternity and parental benefit period. This means that paternity benefits are paid for 36 weekdays provided that the mother is not on maternity or parental leave and benefits simultaneously. The provision aims at making fathers make more use of their right to family-based leave. Thus, taken together, the provisions on paternity leave and parental leave are taken to fulfil the requirements of the Directive, as these 36 weekdays cannot be transferred to the mother, but are lost if the father does not use his right. The Finnish solution is that the parental leave as such is transferable between the parents, but a period of 36 weekdays or six weeks of paternity leave will be lost, unless the father is willing to be the solo care-giving parent during that time. This means that the non-transferable period is earmarked for the father as part of paternity leave. The motivation for the 2012 amendment was to encourage more equal take-up of leave by both parents. The preparatory works for the amendment, when referring to the Parental Leave Directive, state that taken as a whole, the Finnish family-based leave system fulfils the requirements of the Parental Leave Directive.

The parental leave period is tied to the maternity leave period, which lasts for 105 weekdays (Monday-Saturday), and begins at most 50 and at least 30 weekdays before the expected birth, which means that the parental leave takes place before the child is one year old. Adoptive parents are entitled to parental leave if the child is younger than seven, beginning at the time that the adoptive parent has received the child in his or her custody. Either the mother or the father is entitled to the benefits, provided that the parents live together. If they do not cohabit, the father is entitled to the benefits only if the mother does not take part in the care of the child (in the rare cases when, for example, the mother does not live with the child, and may not be sole or shared custodian of the child for reasons such as mental illness or abuse). If the child has been taken into custody, there is no right to benefits. The right to benefits requires that the mother has taken a post-natal health check. The leave and benefits are transferable between the parents, but can be divided between them so that both take a maximum of two leave periods. Without a special reason, benefits cannot be paid for a period shorter than 12 weekdays (Sickness Insurance Act, Chapter 9, Section 10). The Finnish Act on Assisted Fertility Treatments prohibits fertility treatments if there is reason to presume that the child will be given up for adoption (Section 8 (1)(6)). A child that is born by surrogacy abroad may be adopted by Finnish parents, and then the rules for parental leave in the context of adoption apply.

¹³⁸ The manner of counting the length of the leave in ‘weekdays’ goes back to the original provision in legislation from the 1960s, when the working week still consisted of six working days.

5. Modalities of application (Clause 3)

The parents may divide the parental leave into two parts, which have to be at least 12 days long (Employment Contracts Act, Chapter 4, Section 1(2)). Parental benefits may be paid as partial benefits so that the mother and father agree that they share the benefits and are both paid partial benefits simultaneously, provided they have both agreed on part-time work with their employer so that they both work at least 40 and at most 60 % of full-time work. The employer has no responsibility to agree to part-time work, however, and may refuse the request by the employee, but only if the part-time work would cause serious harm to production and service by the workplace, which cannot be avoided by reasonable reassignment of work. The employer has to present the grounds for refusing the request for part-time work in these cases (Employment Contracts Act, Chapter 4, Section 4). Even an entrepreneur has the right to partial parental benefits, if the work in his or her enterprise is cut by 40 to 60 %. (Chapter 9, Section 9 of the Sickness Insurance Act).

The employee has to inform the employer on the use of maternity, paternity and parental leave two months ahead of the planned use of the leave, but when the leave period is 12 days or less, the notice period is one month. If the two-month notice period is impossible because the employee's spouse returns to work, the notice period may be one month, provided that the leave does not cause serious damage to the employer's production or service. The employee may for an acceptable reason change the time of the leave by informing the employer a month ahead. The parent of an adoptive child may inform the employer about a change to the time of the leave for an acceptable reason, as soon as it is possible (Chapter 9, Section 3 a, Employment Contracts Act).

There is no requirement concerning the length of employment, neither permanent nor fixed term, for parental leave, but the Sickness Insurance Act stipulates that the right to parental benefits requires that the person has been insured in Finland for 180 days immediately before the calculated day of birth or before an adoptive child comes into the custody of the person in question. Being insured in another EU Member State corresponds to time being insured in Finland (Sickness Insurance Act Chapter 9, Section 1). There is no possibility of postponing the leave period due to the operation of the employer's organisation, if the requirements for giving notice have been followed. No special rules apply to small enterprises.

Special care benefits may be paid to a person who participates in the care or rehabilitation of his or her child necessary due to illness or disability, and these benefits may also under certain circumstances be paid to the person who cares for his spouse's child or adoptive child, or other child that she or he cares for as a parent. The child must be under 16 and the care of short duration (Sickness Insurance Act Chapter 10, Sections 1 and 2). If the employee needs to be absent for the specific need of care of a family member or some other person near to the employee, the employer has to try to arrange the work so that the employee may be absent from work for that purpose (Chapter 4, Section 7(a) of the Employment Contracts Act). The employee is not entitled to a family-based leave in these cases, however, so that a leave has to be negotiated with the employer.

6. Adoption (Clause 4)

Parental leave is available to persons who adopt a child under seven, and paternity leave provisions also apply to adoption (Chapter 9, Section 11 of Sickness Insurance Act). The main rule (Chapter 9, Section 12 of Sickness Insurance Act) is that an adoptive parent or his/her spouse receives parental benefits or partial parental benefits for up to 234 weekdays from the birth of the child. The period is therefore longer than for biological parents, and takes into account that there is no maternity leave for non-biological parents. Further, parental leave will under all circumstances be paid at least for 200 weekdays, which means that the parental leave of adoptive parents does not depend on the age of the child at the time of adoption, provided the child is under 7. If more than one child is adopted at the same time, the period will be longer, in the same way as when several babies are born.

7. Employment rights and non-discrimination (Clause 5)

The Act on Employment Contracts contains a provision on discrimination and equal treatment, which prohibits the employer from discriminating on the basis of, among other things, family relations (Chapter 2, Section 2 of the Employment Contracts Act). Further, the Act on Equality between Women and Men¹³⁹ defines discrimination on the basis of parenthood or obligation to care for family members as indirect discrimination (Section 7 (3)(2)).

Employees have the right to return to their former tasks after a family-based leave. If this is not possible, the person returning from family-based leave is to be offered work consistent with the employment contract and that corresponds to the former tasks, or if this is not possible either, another job consistent with the employment contract (Chapter 4, Section 9 of Employment Contracts Act). Further, the Employment Contracts Act contains a specific provision (Chapter 7, Section 9) that protects a pregnant employee or an employee on family-based leave. Under Subsection 1, an employer may not dismiss an employee because of pregnancy or because of use of family-based leave. The provision does not prevent use of acceptable individual dismissal grounds, provided the reason is not pregnancy or use of leave. Subsection 2 of the provision gives a burden of proof rule for cases of individual dismissal of a pregnant employee or employee on family-based leave. If an employer dismisses an employee on family-based leave, the dismissal is assumed to have taken place because of this, unless the employer can prove another reason – a shift from the normal burden of proof which makes it easier to prove illegal dismissal of pregnant employees or employees on family-based leave. Subsection 3 concerns collective dismissals. Under this provision, an employer may dismiss a pregnant employee, or an employee on family-based leave, only if all activities of the employer cease. This means that these employees are protected before other employees when the employer reduces the labour force. These provisions of the Employment Contracts Act apply to parental leave as well as other family-based leaves. An employer dismissing an employee for use of family-based leave faces sanctions both for discrimination under the Act on Gender Equality and for illegal dismissal under the Employment Contracts Act.

There is no provision to deal explicitly with maintaining the rights acquired by the worker. The employment contract remains valid during the leave. The mandatory healthcare scheme continues during the parental leave, but as to the relatively rare optional schemes paid by the employer, there seems to be no information available as to what happens to them during the leave. There is no mandatory pay paid by the employer during parental leave. Some collective agreements may contain provisions on pay during parental leave, but such pay on the basis of collective agreement is certainly clearly less frequent than pay during maternity leave is. The benefits that apply in all sectors are described above.

8. Return to work (Clause 6)

After returning to work, an employee may have partial care leave to take care of his or her child or other child living permanently in the household until the second school year in basic education ends (the child is then ca 9 years old), provided the employee has been in his or her present employment at least six months. For the care of a disabled child, the partial leave may continue until the child is 18 (Chapter 9, Section 4 of the Employment Contracts Act). The leave and its conditions have to be negotiated with the employer, however. The employer may refuse the leave only if it causes serious damage to the production and service at the workplace, which cannot be avoided by reasonable rearrangement of work (Subsection 2 of the provision). If an employee has the right to partial leave, but its conditions cannot be negotiated, the employee has the right to one period of partial care leave each year, of a length and at a time that the employee proposes. The length of the partial care leave has to be negotiated and therefore also depends on the employer. Then the partial leave consists of working days of six hours, or 30 hours per week.

¹³⁹ (609/1986).

9. Time off from work on grounds of force majeure (Clause 7)

An employee with a child under 10 living with him or her is entitled to leave for arranging care in case of sudden illness, for a maximum of 4 working days at a time. There is no upper limit to how many times the employee may take such leave. Even the parent who does not live together with the child is entitled to such leave, but parents may not take leave simultaneously. This means that biological parents irrespective of whether they live with the child, and social parents who live with the child are entitled to force majeure care leave (Chapter 4, Section 6 of the Employment Contracts Act). Further, an employee has the right to be absent from work if his or her immediate presence is necessary due to an unforeseen and compelling reason related to an illness or accident of one of his or her family members (Chapter 4, Section 7).

10. Final provisions (Clause 8)

The minimum requirements of the Directive have been met, provided it is acceptable that the non-transferable paternity leave is considered as providing the non-transferable part of parental leave. Finnish legislation does not provide for a non-transferable parental leave in a case where a mother, after her maternity leave, does not wish to take any part of the parental leave, as parental leave is fully transferable between the parents. The aim of making part of the parental leave non-transferable is to promote a more equal sharing of the leave between the parents. Fathers have used their right to leave much less than mothers, and therefore the provision that only cuts rights based on paternity leave if the father does not use his family-based leave may be considered in line with the aim of the Directive. Finnish legislation provides a longer parental leave covered with social security benefits than is required by the Directive.

11. Sanctions (Article 2)

As discrimination on the basis of parenthood or parental obligations by definition constitutes indirect gender discrimination under the Act on Equality, the compensation under the Act on Equality may be applied. The compensation under the Act on Equality has no upper limit, but the amount of compensation may depend on many factors, such as the economic position of the employer. The Employment Contracts Act, Chapter 12 on damages contains a provision on the general employer's responsibility to pay compensation for violation of employer duties. The compensation for illegal dismissal (Chapter 12, Section 2) is the pay for a minimum of 3 and a maximum of 24 months. Dismissal on the ground of family relations is discriminatory and therefore illegal. The employee is not reinstated in his or her former job, but is entitled to compensation. The level of the compensation depends on many factors, such as the assumed length of unemployment of the dismissed person. Chapter 47 of the Criminal Code (39/1889) further criminalises, among others, discrimination in employment (Section 3, Chapter 47). An employer who discriminates in recruitment or during employment a person on the basis of e.g. family relations, may be punished for employment discrimination by fines or imprisonment for up to two months. The victim of the crime has the right to compensation. Compensation may therefore be claimed on several counts, and together the compensation should be dissuasive and proportional.

12. Case law

The Finnish CJEU case of *Kiiski* concerned a mother's right to begin a new paid maternity leave immediately following a family-based leave.¹⁴⁰ The mother had lost pay that she was to receive under the collective agreement. According to the collective agreement, an employee could change the timing and the length of a family-based leave and cancel it for an unforeseen

¹⁴⁰ Case C-116/06 *Sari Kiiski v Tampereen kaupunki* [2007] ECR I-07643.

and acceptable reason. Acceptable reasons were those that the employee could not take into account when she/he applied for family-based leave, such as the death of the child or divorce. A new pregnancy was not considered as an acceptable reason. The CJEU held that the clause violated the prohibition of discrimination.

In Finland, one of the monitoring bodies for the Act on Equality between Women and Men, the Equality Board, has also given an opinion that a clause in a collective agreement which requires a working period of a certain length between two births is discriminatory.¹⁴¹ The Board argued that giving birth often depends on circumstances that are beyond the employee's capacity to plan, such as premature birth.

There is Labour Court case law on pay to be paid during maternity leave under collective agreements (a person on maternity leave is not entitled to pay but to benefits only, unless there is a collective agreement clause on pay). Such cases may also be considered relevant for pay under parental leave. The Labour Court stated in Case TT 2003:86 that a collective agreement was to be interpreted literally as meaning that the extra pay paid by the hour was not to be taken into account in the pay during maternity leave. The Labour Court referred to *Boyle*,¹⁴² *Pedersen*,¹⁴³ and *Gillespie*,¹⁴⁴ which according to the Labour Court mean that the equal pay provisions of the European Union do not apply to pay during maternity leave. The Labour Court based its decision on an interpretation of what was meant by the clause in the collective agreement which referred to pay during maternity leave, but did not define pay. The more recent cases *Gassmayr*¹⁴⁵ and *Parviainen*¹⁴⁶ of the CJEU stated that a pregnant worker granted leave from work is entitled to remuneration of both monthly and supplementary pay. The Finnish Labour Court case concerned a collective agreement clause that entitled a worker on maternity leave to pay instead of the statutory benefit. In the light of *Gassmayr* and *Parviainen* it seems that the Labour Court decision would be contrary to EU case law. In Case TT 2010:139 the Court held that as there was no clause in the collective agreement on higher pay on certain holidays, the employee did not have the right to such pay during maternity leave.

Labour Court, Case TT 1998:34 stated that a clause in a collective agreement was not valid, as it counted into an experience bonus the time spent in mandatory military service, but only a period of 30 days of time spent on maternity and parental leave. The clause was to be considered indirectly discriminatory on the basis of gender. The Labour Court cited *Danfoss*¹⁴⁷ and *Nimz*¹⁴⁸ and pointed out that the experience bonus under the Finnish collective agreement for municipal employees did not constitute pay to be paid objectively for experience at work only. Although parental leave is available to both fathers and mothers, statistically it is mostly taken by mothers, and therefore a pay system that did not allow parental leave to be calculated into the bonus was indirectly discriminatory. The Court also referred to *Bilka*¹⁴⁹ and some related EC case law, but stated that the EC case law did not deal with the exact issue at stake in the Finnish case. Later EU case law does not seem to provide as extended a right as the Finnish case does.¹⁵⁰

¹⁴¹ Equality Board Decision 1/2010.

¹⁴² Case C-411/96 *Boyle and Others* [1998] ECR I-6401.

¹⁴³ Case C-66/96 *Handels- og Kontorfunktionærernes Forbund i Danmark, acting on behalf of Berit Høj Pedersen v Fællesforeningen for Danmarks Brugforeninger and Dansk Tandlægeforening and Kristelig Funktionær-Organisation v Dansk Handel & Service* [1998] ECR I-07327.

¹⁴⁴ Case C-342/93 *Gillespie and Others* [1996] ECR I-475.

¹⁴⁵ Case C-194/08 *Susanne Gassmayr v Bundesminister für Wissenschaft und Forschung* [2010] ECR I-06281.

¹⁴⁶ Case C-471/08 *Sanna Maria Parviainen v Finnair Oyj* [2010] ECR I-06533.

¹⁴⁷ Case C-109/88 *Handels- og Kontorfunktionærernes Forbund i Danmark v Dansk Arbejdsgiverforening, acting on behalf of Danfoss* [1989] ECR 3199.

¹⁴⁸ Case C-184/89 *Nimz v Freie und Hansestadt Hamburg* [1991] ECR I-297.

¹⁴⁹ Case C-170/84 *Bilka-Kaufhaus GmbH v Weber von Hartz* [1986] ECR 1607.

¹⁵⁰ Case C-328/13 *Österreichischer Gewerkschaftsbund* [2013] n.y.r.

13. Practice and other relevant issues

Parental leave, as well as the other family-based leaves, is generally used by the persons entitled to them, but mothers take parental leave much more often than fathers. Information on the use of family-based benefits is routinely followed by authorities, and especially by the National Institute for Health and Welfare. The Institute publishes statistics on family-based leaves, and refers to a range of studies on the theme on its site. The latest figures on the use of maternity, paternity and parental leave are from 2012. Then, practically all mothers used their right to maternity leave, and 84 % of fathers used 1-18 weekdays of paternity leave. The use of the ‘father’s month’ has increased since it was adopted, but still only 32 % of fathers took the ‘father’s month’ in 2012. The fathers who take this option are highly educated, and their spouses also are highly educated. The parental leave is used almost entirely by mothers. The two weeks of ‘bonus’ leave that is available for fathers who use their ‘father’s month’ is used by only 2-3 % of fathers. In 2012, the figure was 1.9 %. The home-care leave (which is covered by flat-rate benefits, not income-related benefits) was used by 88 % of families, at least for some time. In 97 % of cases, the carer is the mother.¹⁵¹ New information based on a survey of parents of children born in 2011 is to be expected later in 2014.

A doctoral dissertation in 2007 concluded that fathers’ use of parental leave is to some extent related to the socio-economic position of the parents, and that when the parents are highly educated, the father is more likely to take parental leave than other men. Gender ideology, i.e. attitudes towards fathers’ take-up of leave, and conceptions of gendered parental responsibilities are quite significant for the realisation of leave rights. Many fathers report that the family economy is an obstacle for their take-up of leave, but their choice is often more strongly based on assumed economic loss than on calculations.¹⁵²

The present Government is planning measures that would bring mothers of pre-school children to the labour market sooner. The Government intends to divide the home-care leave evenly between parents, and make the right of each parent non-transferable,¹⁵³ but the decision so far has not led to a Government Bill. The mandatory sharing of the home-care period has received a very mixed welcome. From the beginning of 2014, a parent who works a maximum of 30 hours per week under an employment contract, as an entrepreneur or on a grant, has the choice of receiving flexible home-care benefits. Parents of children under 3 who work for more than 22.5 hours per week but less than 30 hours are entitled to flat-rate benefits of EUR 160 per month, and parents who work for a maximum of 22.5 hours per week are entitled to EUR 240 per month.¹⁵⁴

FRANCE – Sylvaine Laulom

1. Context

Traditionally, France has an active family policy, providing childcare services, universal child benefits and various leaves for family reasons in order to facilitate the reconciliation of work, private and family life.

Usually, there are no major differences between employees and public servants, even if there are two sets of different rules (the Labour Code for workers, and the statutes for public servants).

¹⁵¹ See *Tilastotietoa perhevapaiden käytöstä* (Statistic information on the use of family-based leaves), available at: http://www.thl.fi/fi_FI/web/fi/tutkimus/hankkeet/perhevapaatutkimus/tilastotietoa_perhevapaiden_kaytosta, accessed 3 April 2014.

¹⁵² J. Lammi-Taskula *Parental Leave for Fathers? Gendered Conceptions and Practices in Families with Young Children in Finland* (academic dissertation), *STAKES Research Report 166*, Gummerus 2007.

¹⁵³ *Hallituksen päätös rakennepoliittisen ohjelman toimeenpanosta* (government decision on implementation of a structural policy programme) 29 November 2013, p. 8.

¹⁵⁴ A former partial home-care benefit was replaced by a more flexible and somewhat higher benefit. See: Government Bill no. 129/2013 vp.

Regarding maternity leave, women are entitled to a maternity leave of 16 weeks. At least three weeks must be taken before the birth. The maternity leave is longer in case of multiple births, in case of complications during pregnancy or during the birth and for women who already have two children.

Since the Second World War, employed fathers have enjoyed three days of paid leave for the birth of their child. In 2002, this leave was extended by 11 days to be taken within four months of the birth of the child. It is longer in case of multiple births (18 days). Paternity leave is paid by the social security fund. Since 2012, this leave can also be taken by the husband or the partner of the mother, even if they are not the father of the child (Article L 1225-35 of the Labour Code).

Adoption leave is 10 weeks, or 22 weeks for the adoption of more than one child.¹⁵⁵ If the adopted child is at least the third child in the household, the leave period is extended to 18 weeks. If the father and the mother are eligible for benefit payments during their adoption leave and if the adoption leave is shared by the parents, 11 extra days off are granted, or 18 days if more than one child is adopted. The two periods of adoption leave can be taken simultaneously.

Every worker (employee or civil servant) also has an individual right to parental leave in case of the birth or adoption of a child until the child reaches the age of three.¹⁵⁶ Compared to other family leaves, parental leave is an individual right for both employed parents to be taken after the maternity or adoption leave. Parental leave and adoption leave are separate categories of leaves and parents are entitled to parental leave after an adoption leave.

Every employee is also eligible for an unpaid leave to care for a sick child under the age of 16 years (Article L1225-61 of the Labour Code). Every employee is eligible for an unpaid leave to care for a sick child under the age of 16. In the private sector, this period of leave is three days a year (five days in specific cases) but this is a minimum and most collective agreements have special arrangements, as in the public sector where employees can take 14 days a year to care for a sick child.

In cases of serious disability or illness of a child under 20, every employee with at least one year of employment with an employer is entitled to an unpaid leave to care for his/her child or to work part time for a period of up to three years (a social security allowance could be paid for a maximum of 310 working days). A similar period of leave is possible for employees who need to care for a relative at the end of their life, either a child or a parent living in the same house.

2. Implementation of Directive 2010/18

Until now, it seems that the only measure implementing Directive 2010/18 is a Decree adopted on 18 September 2012,¹⁵⁷ which modifies the rules for parental leave for public servants. The Decree recognises parental leave as an individual right. Before, for public servants, the mother and the father could take the parental leave or could share it but could not take it simultaneously. This is now possible.

Apart from this Decree, there has been no specific implementation of the Directive for the private sector since generally speaking; French legislation seems to conform to the main requirements of the Directive. A Bill on Gender Equality is currently being discussed in Parliament. Some of the provisions deal with parental leave. They are not presented as an implementation of the Directive however.

The main ‘implementing’ legislation for the private sector is Article L 1225-47 et seq. in the Labour Code; and for public servants Decree 2012/1061. There is no public concordance table.

¹⁵⁵ Article L 1225-37 et seq. in the Labour Code.

¹⁵⁶ Article L.1225-47 et seq. in the Labour Code, see the conditions below.

¹⁵⁷ Decree No. 2012-1061.

3. Purpose and scope (Clause 1)

Parental leave is the right recognised in the public and the private sector, even if two different types of legislation are applicable. Indeed, the Labour Code is not applicable to public servants; this is why parental leave in the public sector is regulated by specific rules including the Decree recently adopted in order to implement the Directive for public servants.¹⁵⁸

Part-time workers, fixed-term contract workers or persons with a contract of employment with a temporary agency are entitled to parental leave. However, the right to parental leave is only recognised to workers who have been working in the company for at least one year before the birth or adoption of the child.

4. Parental leave (Clause 2)

The duration of parental leave is the same in the public and in the private sector and it has not been modified with the implementation of the Directive, certainly because the right to parental leave in France is much longer than what the Directive requires. The initial period of parental leave is one year and it can be renewed twice until the child is three years old. In case of adoption, parental leave can also last a maximum of three years after the child's arrival if the child was younger than three when adopted. In other cases, the parental leave period is a maximum of one year.

If a child is seriously ill or disabled, parental leave can be extended by a year.

The right to parental leave is an individual right and it can be taken by both parents. Parental leave is not available in case of surrogacy, as surrogacy is not legal in France.

5. Modalities of application (Clause 3)

Parental leave can be granted on a full-time or part-time basis, although part-time leave must allow at least 16 working hours per week. Parental leave cannot be refused on any grounds, and there are no specific provisions for small firms. A decision of the *Cour de cassation* about paternity leave highlights the lack of possibility for the employer to refuse that the employee takes this leave. In this case, the employer proposed a postponement of the leave, which the worker refused. The worker was then dismissed for non-authorized absence during the leave. For the *Cour de cassation*, the employee had informed his employer one month before the leave as provided by the Labour Code, and the employer could not refuse. The dismissal was therefore unfair.¹⁵⁹

The employee must inform her/his employer of the starting date and the intended duration of the period during which he/she intends to benefit from the parental leave either on a full-time or part-time basis. When parental leave is taken immediately following the maternity or adoption leave, the employee shall give this information at least one month before the beginning of the leave (two months for public servants), otherwise this information must be given at least two months before. When an employee wants to extend her/his parental leave or take it full time (if the parental leave was initially part time) or part time, he/she must inform the employer one month before the initial term. When the parental leave is on a part-time basis, the number of hours worked per week cannot be modified without the employer's approval unless it is explicitly provided by collective agreement (Article L.1225-51 of the Labour Code). The definition of the work schedule belongs to the employer which is a way to take into account the needs of both employers and workers.¹⁶⁰ If the worker refuses this work schedule, her/his refusal does not constitute serious misconduct if the refusal is justified by their family obligations but it can justify a dismissal (with a notice period and a dismissal allowance).

¹⁵⁸ Article L 1225-47 of the Labour Code and Decree No. 2012-1061.

¹⁵⁹ Cass. Soc. 31 May 2012, No. 11-10282.

¹⁶⁰ Cass. Soc. 4 June 2002, No. 00-42262.

The length of service requirement in order to benefit from parental leave is one year before the birth of a child. In case of successive fixed-term contracts with the same employer, the sum of these contracts is taken into account for the purpose of calculating the qualifying period.

6. Adoption (Clause 4)

Parental leave can be taken after an adoption leave. The only specificity regards the age of the child when adopted (see above).

7. Employment rights and non-discrimination (Clause 5)

During parental leave, the employment contract is suspended. The employer cannot dismiss a worker because he/she is on parental leave.¹⁶¹ The *Cour de cassation* uses the articles of the Labour Code on parental leave to state that the reason to dismiss should not be linked to the parental leave. It could also be possible to consider that being on parental leave could not be considered as a genuine and serious cause of dismissal. If the mother becomes pregnant during her parental leave, the specific protection afforded to pregnant women will apply,¹⁶² and dismissal will be prohibited from the beginning of the pregnancy until four weeks after the end of the maternity leave.

After parental leave, the worker has the right to return to the same job or, if this is not possible, to an equivalent or similar job, where the same advantages apply as before. She/he also has the right to training if techniques or methods of work have changed. The employer should offer a special interview after the period of leave in order to discuss the worker's career path.

The rights acquired or in the process of being acquired by the worker on the date on which parental leave starts are maintained as they stand until the end of the parental leave. During the leave, half of the seniority rights will accumulate. This measure intends to limit some of the consequences of the suspension of the contract of employment during parental leave.

There is a continuity of the entitlements to social security cover, in particular healthcare and maternity during the parental leave.

Parental leave is not remunerated by the employer. However, there are some mechanisms that could help finance some of the leave. For example, some 'time-saving schemes' widely present in collective agreements allow for blocks of time off to be saved up which may be used as parental leave (in this case a short one).

What is most important in France, is that the social security system provides for an allowance during some of the period of parental leave. A childcare allowance called the 'supplement for free choice of working time' (*Complément de libre choix d'activité*; here referred to as 'CLCA'), paid by the National Family Allowance Fund, is available to parents who choose to take partial or full leave during these three years. The CLCA is paid for 6 months for a family's first child and for three years for later children. This is a way to support large families. CLCA payments vary depending on how much a parent works during this time. Parents receive EUR 576.24 per month if they take full leave, EUR 438.17 per month if they work no more than half time, and 331.35 per month if they work between 50 and 80 % of a full work schedule (the allowance is less important if parents receive the general family allowance paid for children under the age of 3 whether parents are working or not, in this case: EUR 390.52, EUR 252.46 and EUR 145.63).

Finally, parents of at least three children who take full-time leave to care for them may opt to receive the 'optional supplement for free choice of working time' (*Complément optionnel de libre choix d'activité*; COLCA) instead of the CLCA. The COLCA pays a higher rate (EUR 819.14 per month) than the CLCA, but only lasts for one year. This is a way to

¹⁶¹ Cass. Soc. 18 October 1989, No. 87-45724, and Cass. Soc. 12 February 1997, No. 93-42510.

¹⁶² Cass. Soc. 11 February 2004, No. 01-43574.

encourage a shorter parental leave (only one year but with higher payments). To receive CLCA or COLCA payments, parents must first meet a job tenure requirement: two years of continuous employment for a parent's first child, two years of employment over the previous four years for a parent's second child, or two years of employment over the previous five years for a parent's third child and beyond.

The newly adopted Bill on Gender Equality intends, among other things, to reform parental leave and to encourage more fathers to take parental leave.¹⁶³ The right to parental leave will remain the same, but the conditions of the social benefits for the parent who takes this leave will be amended. Currently, the 'supplement for free choice of working time' is paid for six months for the first child and three years for later children. The proposed reform will ensure payment of the CLCA for a further six months for a family's first child if the other parent takes this extension of the parental leave. So, a period of one year of paid parental leave will be recognised for the first child if both parents share parental leave. For later children, the CLCA will be reduced to 2 years in half time and it will only be paid for three years if the parental leave is shared. The new rules will not apply to single parents.

8. Return to work (Clause 6)

According to Article L 1225-55 of the Labour Code, workers have the right to return to the same or similar job after their parental leave. However, there are no specific provisions regarding the right for a worker returning from parental leave to change her/his working hours apart from Article L.3122-23s which provide the possibility for workers to work partial time. There are no specific mechanisms to ensure that workers and employers will maintain contact during the period of leave and make arrangements for any appropriate reintegration measures. The only right recognised by the Labour Code (Article L1225-56) is the right for the worker during the parental leave to have a personal skills assessment and access to vocational training during the parental leave and also when he/she returns to work. This is an important right as the employer has the obligation to train the employees in order for them to develop new skills that are suited to the new jobs in the market.

Decree 2012/1061, which has implemented the Directive for public servants, provides that six weeks before the return to work, the civil servant should have an interview with the human resources manager.

9. Time off from work on grounds of force majeure (Clause 7)

A specific and unpaid leave is recognised in case of sickness of a child. Every employee is eligible for an unpaid leave to care for a sick child under the age of 16. In the private sector, this period of leave is three days a year (five days in specific cases) but this is a minimum and most collective agreements have special arrangements, such as the public sector where employees can take 14 days a year to care for a sick child.

10. Final provisions (Clause 8)

The French parental leave is much longer than the one provided by the Directive, as it can last three years. Moreover, this is an unrestricted right and the social security systems provide for an allowance for the parents to be able to take this parental leave. However, some of the detrimental effects of the parental leave scheme have been demonstrated. The argument is well known: an extended leave, especially for unskilled women, may have a negative impact on women's careers and earnings profiles. For this reason, there is a growing debate in France about whether parental leave should not be shorter and better paid.

¹⁶³ *Projet de loi pour l'égalité entre les femmes et les hommes*, available at: http://www.assemblee-nationale.fr/14/dossiers/egalite_femmes_hommes.asp, accessed 28 April 2014.

11. Sanctions (Article 2)

According to Article R. 1227-5 of the Labour Code, employers not complying with the provisions on parental leaves can be subjected to a fine of EUR 1 500. This penal sanction is rarely imposed, and most of the time, damages will be awarded.¹⁶⁴ The system of sanctions will mainly depend on the rules on unfair dismissals.

The employer cannot reject a parent's decision to take a parental leave. Any dismissal for this reason will be considered as without any real and serious cause and the sanctions for unfair dismissal will apply. If the employee has at least two years of service and works for a company with at least 11 employees, she/he will be entitled to a minimum of at least six months of salary by way of damages. There is no set maximum to the award and the damages awarded may be higher depending on the actual loss suffered. It could therefore be higher depending on the age and length of service of the employee and the chances of reemployment, for example. If the employee has less than two years of service and/or works for a company with fewer than 11 employees, the level of damages depends on the actual loss suffered by the employee and no minimum is provided by law. Article L 1225-71 of the Labour Code explicitly provides that the violation of the provisions on parental leave may result in the awarding of damages in addition to compensation of dismissal.

The same sanctions apply if at the end of the parental leave, the worker is not given an equivalent or similar job. The *Cour de cassation* recently held that the employer must give the employee the same job when available, and could not offer another one in another place even if there was a mobility clause in the contract of employment. Priority is given to the reinstatement of the worker in his/her former job. If the employer does not fulfil his/her obligation, the employee could claim that the termination of the contract was due to the employer's behaviour. In this case, when the court considers that the employer's breach is sufficiently serious, the termination will be deemed to constitute an unfair dismissal with the consequences mentioned above.¹⁶⁵

The lack of vocational training at the end of a parental leave is also sanctioned. For example, the employer cannot dismiss a worker returning from a parental leave for professional incompetence if the employer has not fulfilled her/his training obligations. However, in this area, the *Cour de cassation* has refused to confirm that the mere failure of the employer to comply with his/her training obligations in itself constitutes discrimination.¹⁶⁶ This has important consequences as discriminatory dismissals are considered null and void and they incur more severe sanctions (namely reinstatement of the employee concerned and awarding of substantial damages).

The sanctions seem to be effective and dissuasive enough according to European principles. However, statistically the longer the parental leave is, the higher the risks are for the worker to lose her job at the end of the parental leave and the compensation will only be financial. Until now, sanctions for not respecting the rules on parental leave have not been combined with the sanctions on discrimination as the violations of the rules on parental leave are not in themselves analysed as discriminatory.

12. Case law

The expert is not aware of any case law contrary to the relevant case law of the CJEU. The most important case law on parental leave is detailed above.

13. Practice and other relevant issues

In France, parental leaves are widely used and most of the time it is taken by the mother. According to a recent report, one out of two mothers has temporarily stopped working or has

¹⁶⁴ Article L 1225-71 of the Labour Code.

¹⁶⁵ Cass. Soc. 19 June 2013, No. 12-12758.

¹⁶⁶ Cass. Soc. 5 March 2014, No. 12-27701; and Cass. Soc. 5 March 2014, No. 11-14426.

reduced her working time for at least one month after her maternity leave. Most of the time, these changes in working time occur in the frame of a parental leave. Parental leaves are mostly taken by unskilled women. Only 12 % of fathers have reduced their working time after their paternity leave.¹⁶⁷ This is why proposals have now been made to reduce the duration of the leave and to improve its payment, together with an improvement of childcare facilities. The Bill on Gender Equality proposes another solution. The right to parental leave will remain the same but the duration of allowances provided by the social security schemes could be reduced if the parental leave is not shared by both parents or, in contrast, it could be extended if it is shared.

GERMANY – Ulrike Lembke

1. Context

Parental and adoption leave are organised as special means to facilitate the reconciliation of working and family life. Within the legal framework, the duration of parental and adoption leave can be specified by the parents, and up to fourteen months of the leave are financed by state allowances in an amount equalling 65 % up to 100 % of the previous income, but not exceeding EUR 1 800. One of the main purposes of parental allowances is to encourage fathers to take parental leave. It is possible for parents to take parental leave simultaneously as well as to work part time during parental leave.

Pregnancy and maternity leave are separate categories of leave, aiming at the protection of the mother and her unborn or new-born child. Their duration is short, they are realised by statutory employment prohibitions with very few exceptions and they are fully-paid leaves, financed by the statutory health insurances and contributions of all employing enterprises. Self-employed mothers are not automatically entitled to maternity allowances.

Paternity leave is not granted under German law, but civil servants can apply for a day's special leave on the occasion of their partner's confinement.

For a long time, childcare leave as a kind of emergency leave was rendered possible only by case law. It is now covered by Section 45 of Social Code No. V (*Sozialgesetzbuch V*). Employees are entitled to childcare leave to care for a sick child under the age of twelve for up to ten working days per year; the duration is to be extended for up to some months when one parent is caring for a terminally ill child. In rare cases, the leave is fully paid under the employment contract or the respective collective agreement; otherwise it is financed under the statutory health insurance in an amount equalling 70 % of the income.

2. Implementation of Directive 2010/18

In January 2007, the Federal Law on Parental Allowance and Parental Leave (*Bundeselterngeld- und Elternzeitgesetz, BEEG*)¹⁶⁸ entered into force. The BEEG provides for parental leave for up to three years and for a parental allowance to parents for up to fourteen months after a child's birth, provided that at least two months are taken by the other parent. The regulations of the BEEG are mandatory law: the entitlement to parental leave must not be restricted by collective agreements.

As far as the expert knows, the German Government or respective Ministry has not drawn up or published tables to illustrate the implementation – an omission which might be explained by the date of the BEEG's entry into force. In 2012, the BEEG was amended, inter

¹⁶⁷ S. Govillot 'Après une naissance, un homme sur neuf réduit ou cesse temporairement son activité, contre une femme sur deux' *Insee Première* No. 1454 (June 2013) available at: <http://www.insee.fr/fr/ffc/ipweb/ip1454/ip1454.pdf>, accessed 6 April 2014.

¹⁶⁸ *Gesetz zum Elterngeld und zur Elternzeit (Bundeselterngeld- und Elternzeitgesetz, BEEG)* of 5 December 2006, Official Journal (*Bundesgesetzblatt BGBl*), part I p. 2748.

alia to enable female employees expecting another child to terminate their parental leave and switch to maternity leave with clearly better conditions without any further requirements.¹⁶⁹

However, the demands of the German Women Lawyers' Association and the German Federation of Trade Unions for further amendments of the BEEG to fully implement the Directive¹⁷⁰ failed. The German Government claimed that the provisions of the BEEG were in accordance with the provisions of the Directive or went far beyond them. With regard to the right to return to one's former post and to request changes to one's working time and/or pattern when returning, the Government's assertion cannot be confirmed.

3. Purpose and scope (Clause 1)

The Federal Law on Parental Allowance and Parental Leave is applicable to both the public and the private sector. The scope of its regulations on parental leave includes any dependent employment relationship: part-time work, fixed-term work, temporary work, marginal employment, apprenticeship and employees working at home. The scope of its regulations on parental allowances is much broader and also includes self-employed persons, freelancers, students, housewives and unemployed persons. Within the civil service, the regulations on parental leave apply directly to workers and accordingly to civil servants as well.

Parental leave is generally taken by the parents or their spouses or partners. However, when the parents are seriously ill or severely disabled or have died, parental leave can be taken by close relatives, namely brothers and sisters, aunts and uncles or grandparents. When one of the parents is underage or still in vocational training, parental leave can be taken by the grandparents.

4. Parental leave (Clause 2)

Every parent (whether working in the public or the private sector) is entitled to parental leave for up to three years after the child's birth or after maternity leave or, in the case of an (intended) adoption or full-time foster care, beginning with the child's entry into the household. Parental leave requires that the child lives in the parent's household and that the parent cares for the child personally.

Twelve months of the three-year parental leave period can be taken after the third and before the eighth birthday of the child with the consent of the employer. The maximum age of eight applies to adoption and full-time foster care as well. In 2012, a ministerial draft Bill suggested that 24 months of the parental leave could be taken until the fourteenth birthday of the child,¹⁷¹ but this did not become law.

The entitlement to parental leave for up to three years is an individual right for each parent and cannot be transferred. The distribution of parental leave periods between the parents is only important for the entitlement to parental allowances. The BEEG provides for a parental allowance to parents for up to 14 months, provided that at least two months are taken by the other parent (normally the father), otherwise the parental allowance is limited to 12 months.

¹⁶⁹ This amendment was a consequence of the *Kiiski* and the *Küçükdevici* cases, intensified by several German judgments emphasising that the previously existing legislation constituted an infringement of European law, e.g. Administrative Court of Berlin, judgment 15 May 2012, 7 K 48/11; Administrative Court of Augsburg, judgment of 29 September 2011, Au 2 K 11/1018; Administrative Court of Gießen, judgment of 18 March 2010, 5 K 1084/09.GI. See also: Cases C-116/06 *Sari Kiiski v Tampereen kaupunki* [2007] ECR I-07643; and C-555/07 *Küçükdevici v Swedex GmbH & Co KG* [2010] IRLR 346.

¹⁷⁰ Deutscher Juristinnenbund *Stellungnahme zum Entwurf eines Gesetzes zur Erweiterung der Großelternzeit und zur Modernisierung der Elternzeit* of 14 November 2012, <http://www.djb.de/Kom/K1/st12-10/>; Deutscher Gewerkschaftsbund *Stellungnahme zum Entwurf eines Gesetzes zur Erweiterung der Großelternzeit und zur Modernisierung der Elternzeit* of 14 November 2012, <http://www.dgb.de/themen/++co++article-mediapool-dc470a46807aaff06d6c6a60309d4021>, both accessed 10 April 2014.

¹⁷¹ See ministerial Draft Bill on grandparental leave and the modernisation of parental leave of 6 September 2012, http://www.paritaet-mv.de/fileadmin/dokumente/Fachinformationen/Familie/grosselternzeitgesetz_01.pdf, accessed 11 April 2014.

Surrogacy is prohibited in Germany and therefore questions of shared entitlement to parental leave do not arise.

5. Modalities of application (Clause 3)

Parental leave can be taken ‘full time’, by continuing part-time work or by reducing full-time to part-time work. The parent is not allowed to work more than 30 hours a week during parental leave under Section 15(4)(1) of the BEEG. Working during parental leave does not extend the maximum duration of three years. The BEEG does not provide for a time credit system but flexibility is ensured by the possibility of taking up to twelve months of the parental leave between the third and eighth birthday of the child with consent of the employer and the aforementioned possibility of part-time work during parental leave. Every parent is free to divide his or her parental leave into two different periods. An approved extension of the first period does not count as a second period. Further divisions of parental leave, i.e. taking parental leave for some weeks during summer holidays, are to be approved by the employer.

Under Section 16(1) of the BEEG, the employer must be notified of the intention to take parental leave. The notice period is at least seven weeks before the beginning of the parental leave. The notice must contain the precise dates of the beginning and the end of the parental leave in the next two years. The parent is entitled to parental leave and does not need the consent of the employer. However, if the parent has taken parental leave for only one year and wishes to extend the leave for up to two or three years, then the employer’s consent is needed. The required notice with precise dates is therefore a means of balancing the interests of the parent and the employer. Maternity and parental leave are statutorily recognised reasons to employ a substitute under a fixed-term contract.

The entitlement to parental leave requires no specific period of service. Employees under fixed-term contracts have a right to parental leave as any other employed parent. However, fixed-term contracts are not extended by the period of parental leave and may therefore expire during parental leave. Exceptions to this rule apply to fixed-term contracts for junior researchers at universities and for vocational training. The first period of parental leave within the first three years after the child’s birth or entry into the household cannot be postponed by the employer due to operational reasons. A reduction of working time to work part time during parental leave and a possible second period of parental leave are to be approved by the employer. In smaller enterprises, the employer can refuse her/his consent to a reduction of working time during parental leave. And it is easier for small enterprises with fewer than ten employees to dismiss parents after the parental leave because the general protection against dismissal differs depending on the size of the firm.

The BEEG does not provide for special conditions for parents of children with a disability or a long-term illness, except that the parental leave can be prematurely terminated due to severe illness or disability of the child if there are no urgent adverse operational reasons. For example, the parents may decide on a different division of parental leave, or to take special care leave instead. For special childcare after parental leave, parents are entitled to this special care leave or a reduction of their working time under Section 3(1) of the Law on Home Care Leave (*Pflegezeitgesetz, PflZG*)¹⁷² in enterprises with more than fifteen employees for up to six months. Or they may reduce their working time to no less than fifteen hours per week under the new Law on Family Home Care Leave (*Familienpflegezeitgesetz, FamPflZG*)¹⁷³ in agreement with their employer for up to two years. Taking care leave under these laws is not restricted to the time up to the third or eighth birthday of the child. Care leave can be taken when the maximum duration of parental leave has already been taken (but does not depend upon this.) During care leave, the parents enjoy

¹⁷² *Gesetz über die Pflegezeit (Pflegezeitgesetz, PflZG)* of 28 May 2008, Official Journal (Bundesgesetzblatt BGBI), part I p. 874, 896.

¹⁷³ *Gesetz über die Familienpflegezeit (Familienpflegezeitgesetz, FPfZG)* of 6 December 2011, Official Journal (Bundesgesetzblatt BGBI), part I p. 2564.

special protection against dismissal. Care leave under the Act on Family Home Care Leave is financed by an interest-free loan granted by the employer and secured by the respective authorities for up to two years.

6. Adoption (Clause 4)

The provisions of the BEEG apply directly and without special regulations to adoptive parents. Parental leave can be taken with the child's entry into the household.

7. Employment rights and non-discrimination (Clause 5)

From the moment of applying for parental leave (but not more than eight weeks before the leave starts) up to the end of the parental leave, parents enjoy special protection against dismissal: they may not be dismissed except under special circumstances such as a threat to the employing company's existence or its (partial) closure¹⁷⁴ and with the approval of the supervising authority. Dismissal by the end of the parental leave can become effective when the notice of termination is given at least three months before the dismissal is to become effective.

The BEEG does not explicitly cover the right to return to the former job or to an equivalent post.¹⁷⁵ Although it is generally acknowledged that employees benefitting from parental leave have the right to return to an equivalent or similar job consistent with and based on their employment contract or provisions in the respective collective agreement,¹⁷⁶ an explicit implementation in the BEEG is found to be desirable. During parental leave the employment relationship is suspended. Thus, parents generally do not lose any rights they acquired before the leave. However, the process of acquiring certain rights may be suspended during parental leave: for every month of parental leave, the parent loses his/her entitlement to 1/12 of his/her annual leave. Civil servants only receive a proportionately decreased annual (Christmas) bonus according to their working months of the respective calendar year. Some collective agreements for the civil service and private employment relationships do not take parental leave into account for the assignment to a higher wage group. According to case law, this constitutes no indirect sex discrimination or the indirect discrimination is justified by the lack of working experience of parents who have taken parental leave.¹⁷⁷ Under Section 28 of the Act on the Remuneration of Federal Civil Servants, childcare periods for up to three years as well as parental leave count as periods of experience.

The BEEG provides for a parental allowance for parents in the amount of 65 % up to 100 % of the previous income for up to 14 months, provided that at least two months of the parental leave are taken by the other parent (normally the father). This entitlement even covers parents who are not entitled to parental leave such as self-employed parents. During parental leave, parents continue to be covered by their social security systems such as healthcare. Childcare periods for children under the age of three are taken into account for statutory entitlements to pension and unemployment benefits.

¹⁷⁴ Due to the Administrative Court of Oldenburg, judgment of 20 February 2012, 13 A 451/11, the restructuring of an employing company or parts of it may be equated with partial closure. This decision gives employers additional latitude to dismiss caring parents, especially in times of economic crisis.

¹⁷⁵ See G. Nassibi et al. 'Geschlechtergleichstellung durch Arbeitszeitsouveränität', *Zeitschrift des Deutschen Juristinnenbundes* 3/2012, pp. 111-116.

¹⁷⁶ See Bundesministerium für Familie, Senioren, Frauen und Jugend (ed) *Elterngeld und Elternzeit* Berlin 2013, p. 81, <http://www.bmfsfj.de/RedaktionBMFSFJ/Broschuerenstelle/Pdf-Anlagen/Elterngeld-und-Elternzeit-2013.pdf>, accessed 12 April 2014.

¹⁷⁷ The following decisions concerned full-time parental leave: Federal Labour Court, judgment of 21 November 2013, 6 AZR 89/12, and judgment of 27 January 2011, 6 AZR 526/09; State Labour Court of Baden-Württemberg, judgment of 17 June 2009, 12 Sa 8/09; Labour Court of Heilbronn, judgment of 3 April 2007, 5 Ca 12/07.

8. Return to work (Clause 6)

During parental leave, parents may continue to work in the amount of their previous part-time employment or request a reduction of their former working time under Section 15(7) of the BEEG. In the latter case, parents have the right to return to their former working time (e.g. full-time) after parental leave under Section 15(5)(4) of the BEEG. The BEEG does not cover reductions of working time after parental leave.

The employee may request a reduction of working time when returning to work under Section 8 of the Part-Time and Fixed-Term Employment Act (*Teilzeit- und Befristungsgesetz, TzBfG*¹⁷⁸). Conditions are that the employer employs more than 15 persons, that the employee has worked for her/him more than six months and that there are no opposing operational reasons. Opposing operational reasons apply if the reduction were to cause a considerable impairment of organisation, working conditions or safety in the company, or disproportionate costs. There is no right to an increase of working time under the TzBfG.

What working parents need in addition to the general possibilities for the reduction of working time, is the right to a temporary reduction of working time, and to individually negotiated working times during periods of childcare.¹⁷⁹ Unlimited part-time work after parental leave causes serious risks for the income, career and pension entitlements of (mostly female) working parents.

Parents are advised to maintain contact with their employer during parental leave and try to make arrangements for their reintegration, but there are no mechanisms to ensure this. A study of the respective Ministry shows that the regular contact of the parent with his/her employer leads to 63 % of these communicative parents returning to their former post.¹⁸⁰

9. Time off from work on grounds of force majeure (Clause 7)

Emergency childcare leave is covered by Section 45 of Social Code No. V (*Sozialgesetzbuch V*). Employees are entitled to childcare leave to care for a sick child under the age of twelve or with disabilities for up to ten working days per year (single parents: up to twenty working days per year). Emergency childcare leave can be taken for every child individually but its maximum total duration may not exceed 25 working days per year (single parents: 50 days). The duration is to be extended for up to some months when one parent is caring for a terminally ill child. In rare cases, the leave is fully paid under the employment contract or the respective collective agreement, otherwise it is financed under the statutory health insurance in the amount of 70 % of the income.

10. Final provisions (Clause 8)

In the expert's view, all minimum requirements as specified in the Directive have been met, although four months appear to be a very short period for caring for a new-born or newly adopted child.

To a rather significant extent, German legislation goes far beyond the provisions of the Directive: parental leave can be taken for up to three years by every parent, the entitlement to parental leave does not require any length of service, the employer is not allowed to postpone the parental leave, and parents are entitled to parental allowances for up to fourteen months.

¹⁷⁸ *Teilzeit- und Befristungsgesetz* of 21 December 2000, Official Journal (*Bundesgesetzblatt, BGBI.*), part I, p. 1966, <http://www.gesetze-im-internet.de/tzbfG/BJNR196610000.html>, accessed 7 April 2014.

¹⁷⁹ See E. Kocher et al. *Das Recht auf eine selbstbestimmte Erwerbsbiografie* Baden-Baden, Nomos 2013; and W. Kohle "Return to work" – europäische Impulse und deutsche Handlungsmöglichkeiten', in: C. Hohmann-Dennhardt et al. (eds.) *Geschlechtergerechtigkeit. Festschrift für Heide Pfarr* pp. 489-503, Baden-Baden, Nomos 2010.

¹⁸⁰ See Bundesministerium für Familie, Senioren, Frauen und Jugend (ed) *Elternumfrage 2013* Berlin 2013, p. 4, http://www.erfolgsfaktor-familie.de/data/downloads/webseiten/Elternumfrage_2013.pdf, accessed 7 April 2014.

11. Sanctions (Article 2)

The BEEG does not provide any sanctions in case of violation of its rules. If the employer does not confirm the timely announced parental leave or if the parent is unjustifiably dismissed during parental leave, the parent has to initiate proceedings before the respective labour court. The court will decide that the employer has to confirm the parental leave or that the dismissal is invalid, and the employer will have to pay the court fees and the parent's expenses – but this would be the normal outcome of a labour-law case and does not constitute a special sanction.

12. Case law

The expert is not aware of any national case law either contrary to the relevant case law of the CJEU or providing more favourable rights than the provisions of the Directive, national provisions and/or the case law of the CJEU. The courts apply the national provisions, which are mostly consistent with the provisions of the Directive and the case law of the CJEU.

13. Practice and other relevant issues

Pregnancy and maternity leave covered by employment prohibitions has to be taken and can only be taken by mothers. There is no general data available about the extent of emergency childcare leave but statutory health insurance companies indicate that fathers take their turn more often, e.g. in 2011, one of the main insurance companies calculated that 13 % of the emergency care leaves was taken by fathers.¹⁸¹ The option of family home-care leave is not used.¹⁸²

In 2012, 26 % of the mothers and 2 % of the fathers with a child under the age of three took parental leave.¹⁸³ This does not mean that parental leave is not taken but that it is taken for shorter periods of time. 30 % of all fathers of children born in 2012 received parental allowances – but nearly 80 % of all fathers receiving parental allowances only took the two months of parental leave that are obligatory in order to receive the parental allowances.¹⁸⁴ The number of fathers taking paid parental leave is increasing, but the number of months taken by fathers is decreasing. The decision to take parental leave or not is closely linked to the question of financial security, especially for fathers¹⁸⁵ – but the consequences of this decision are often faced by mothers, because only a longer period of parental leave taken by fathers can be supportive of the mother's return to employment.¹⁸⁶ Thus, parental allowances and parental leave are two of the most important means to facilitate the reconciliation of family and working life.

A new law to amend the Federal Law on Parental Leave and Parental Allowances entered into force on 1 January 2015 and the new regulations will be applied from 1 July 2015.¹⁸⁷ Until then, the law provides for parental leave for up to three years and for a parental allowance to parents for up to 14 months after birth, provided that at least two months are taken by the other parent. The amendments to the BEEG extend the duration of the entitlement to parental allowances of parents working part-time. They can receive their parental allowances in payments of halved amounts while the number of months paid is

¹⁸¹ See DAK, <http://www.dak-mitgliedergemeinschaft.de/aktuelles/-bei-fieber-wacht-papi-immer-oefter-am--kinder-krankenbett-317-dak.html>, accessed 14 April 2014.

¹⁸² See Süddeutsche Zeitung of 16 July 2013, <http://www.sueddeutsche.de/politik/wenig-interesse-an-familien-pflegezeit-verbaende-sprechen-von-totalausfall-1.1722949>, accessed 14 April 2014.

¹⁸³ See Federal Statistics Agency, https://www.destatis.de/DE/ZahlenFakten/Indikatoren/QualitaetArbeit/Dimension3/3_9_Elternzeit.html, accessed 14 April 2014.

¹⁸⁴ See Federal Statistics Agency, https://www.destatis.de/DE/PresseService/Presse/Pressemitteilungen/2013/12/PD13_411_22922.html, accessed 14 April 2014.

¹⁸⁵ See Hans Böckler Foundation, http://boeckler.de/39820_39841.htm, accessed 14 April 2014.

¹⁸⁶ See Hans Böckler Foundation, http://www.boeckler.de/45592_45622.htm, accessed 14 April 2014.

¹⁸⁷ See: Federal Ministry for Family, Senior Citizens, Women and Youth, <http://www.bmfsfj.de/BMFSFJ/familie.did=211676.html>, accessed 5 December 2014.

doubled. Parents working simultaneously part-time between 25 and 30 hours per week while taking simultaneous parental leave for 4 months are entitled to additional parental allowances for these months (partnership bonus). And to increase the flexibility of parental leave, the amended BEEG grants every parent the right to take up to 24 months of the parental leave between the third and eighth birthday of the child without needing the consent of the employer, instead of up to 12 months with consent under the current law. The amendments are intended to encourage both parents to work part-time during parental leave and to share family responsibilities and childcare duties more equally.¹⁸⁸

The German Women Lawyers Association welcomed the improvements for parents working part-time and sharing care responsibilities.¹⁸⁹ However, it criticised the complications and restrictions of the ‘partnership bonus’. It suggested to accept part-time work between 20 and 30 hours per week and to secure the entitlements of single parents. It further suggested the introduction of the possibility to take parts of the parental leave between the third and fourteenth birthday of the child, and addressed questions on the distribution of working time as well as protection against dismissal after parental leave. The Association pointed out that the lack of a right to return to work after parental leave violates Directive 2010/18.

GREECE – *Sophia Koukoulis-Spiliotopoulos*

1. Context

1.1. The Greek Constitution requires that the State protect the family, marriage, motherhood and childhood and take measures to address the demographic problem (Article 21(1) and (5)); the latter is becoming increasingly acute, as the birth rate continues to fall, with the fertility rate at 1.3 in 2012 already being far below the population replacement level, which is 2.1.¹⁹⁰ The Constitution also requires gender equality (Article 4(2)). These rules have vertical and horizontal effect in all fields, even beyond those of EU law. All courts review the conformity of statutes with the Constitution, EU law and ratified treaties and set aside those they find contrary thereto.

1.2. Public sector: Civil servants and permanent employees of legal persons governed by public law are covered by the Civil Servants’ Code (CSC)¹⁹¹ which also applies to permanent employees of local authorities (Second Article CSC) and special categories of public officials, when the relevant legislation refers to the CSC or is silent (Article 2(2) CSC); other such categories are covered by specific legislation. CSC provisions on leaves also apply to persons employed by the State, legal persons governed by public law and local authorities under a private-law contract of indefinite duration,¹⁹² not to those employed by the same employers under a fixed-term contract..

Private sector: specific legislation and/or collective agreements (CAs) mostly set out lower standards for leaves than those applying to persons employed in the public sector on a public law relationship or on a contract of indefinite duration, in particular regarding the length of the leave, pay and social security coverage, no requirement of previous service, as explained under 4.1., 5.3., 7.5 and 7.6. in this report, below.

¹⁸⁸ See: Federal Ministry for Family, Senior Citizens, Women and Youth, <http://www.bmfsfj.de/BMFSFJ/familie.did=209870.html>, accessed 3 October 2014.

¹⁸⁹ See <http://www.djb.de/Kom/K4/st14-10/>, accessed 3 October 2014.

¹⁹⁰ See Hellenic Statistical Authority (ELSTAT) *Living Conditions in Greece* January 2014, p. 14 (2012 figures): http://www.statistics.gr/portal/page/portal/ESYE/BUCKET/General/LivingConditionsInGreece_0114.pdf, and European Commission *Employment and Social Situation Quarterly Review, Special Supplement on Demographic Trends* March 2013 (2011 figures): http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KE-BH-13-0S2/EN/KE-BH-13-0S2-EN.PDF, both accessed 29 June 2014.

¹⁹¹ CSC (Act 3528/2007), OJ A, 26 of 09 February 2007, as amended.

¹⁹² Article 4(5) Act 2839/2000, OJ A 196 of 12 September 2000.

1.3. The rules on leaves are therefore complex, fragmented, unequal and scattered. The ensuing lack of transparency and the growing legal uncertainty are exacerbated by legislative practices: long statutes containing a mixture of provisions, lacking any connection internally and to the title of the statute ('omnibus laws') and difficult to combine amongst them and with other relevant legislation, are adopted by urgent procedures, under Troika pressure. In this way, new provisions are adopted or previous ones are (explicitly or implicitly) modified or repealed, also regarding parental leave matters. The courts are overwhelmed and case law cannot catch-up with new legislation.

1.4. Parental and adoption leaves as a rule are distinct from pregnancy/maternity, paternity and other care leaves. According to the Council of the State (Supreme Administrative Court – CS), parental leave is required by the Constitution (Articles 21(1) and (5) and 4(2)) and by 'the EU law principle regarding the harmonisation of professional and family life, which, as a natural corollary to the principle of equal treatment of men and women and a means for the substantive implementation of the latter principle, requires that both men and women be granted parental leave, as an individual right, in the public and private sectors, in order to be able to raise their children and harmonise their professional and family life, and that men be encouraged to assume an equal share of family responsibilities (see CJEU cases *Gomez, Hill, and Gerster*)'. Consequently, relying on the constitutional basis of parental leave, in light of or in conjunction with EU law, the CS extended the parental leave provided by the CSC to other public officials, who were not or were inadequately covered by the CSC or other legislation.¹⁹³ It also extended the CSC parental leave in cases of multiple births, and it declared invalid statutory provisions which deprived fathers of parental leave or reduced the parental leave of judges (see 4.1. below).

1.5. The legislation transposing Directive 2010/18 sets out minimum standards and provides that it does not affect more favourable provisions or agreements. The main transposing legislation (see 2.1. below) repeals the provisions of Act 1483/1984¹⁹⁴ on parental leave (private sector), but it does not explicitly repeal or modify other legislation. It merely vaguely repeals 'any less favourable provision'. Other provisions therefore remain on the books. As a result, legal uncertainty is prolonged. So, in order to grasp the legal situation regarding parental leaves following the transposition of Directive 2010/18, it is not sufficient to read the formally transposing legislation. One must also find relevant pre-dating legislation remaining on the books, as well as relevant post-dating legislation, and try to figure out which provisions are more favourable and therefore applicable in each particular case. This exercise, which is quite difficult even for experienced lawyers and judges, can only make sense if one contrasts the transposing provisions with the pre-dating and post-dating provisions regarding each particular matter and each particular area.

2. Implementation of Directive 2010/18

2.1. The Directive was transposed by two pieces of legislation: Articles 48-54 of Act 4075/2012 (the main transposing legislation) and Decree 80/2012 covering maritime workers on commercial ships flying the Greek flag (maritime legislation).¹⁹⁵ Both pieces of legislation transposed the complete Directive regarding the workers that they concern.

2.2. Under each Article the corresponding Directive provisions are mentioned.

¹⁹³ Leading judgments of CS (Plen.) 3216/2003, CS 1 and 2/2006. Cases C-342/01 *María Paz Merino Gómez v Continental Industrias del Caucho SA* [2004] ECR I-02605; C-243/95 *Kathleen Hill and Ann Stapleton v The Revenue Commissioners and Department of Finance* [1998] ECR I-03739; and C-1/95 *Hellen Gerster v Freistaat Bayern* [1997] ECR I-5253, respectively. See S. Koukoulis-Spiliotopoulos 'The harmonisation of family and professional life of men and women: Community and national *acquis* (CS 3216/2003)' *Διοικητική Δίκη (Administrative Trial)* 2004, pp. 572-592 (in Greek); S. Koukoulis-Spiliotopoulos 'Retirement and harmonisation of family and work; issues of substantive gender equality and judicial protection (ECJ 26.3.2009 C-559/07)' *Επιθεώρησης Εργατικού Δικαίου (Social Security Law Review)* 2009 pp. 753-785.

¹⁹⁴ OJ A 153/1984.

¹⁹⁵ OJ A 89 of 11 April 2012, and OJ A 138 of 14 June 2012, respectively.

3. Purpose and scope (Clause 1)

3.1. The main transposing legislation applies to both the public and the private sector. Maritime legislation only applies to maritime work in the private sector. The military navy is covered by the legislation regarding the military (see 4.1. below).

3.2. The main transposing legislation covers natural, adoptive or foster parents employed in any relationship or form of employment, including part-time and fixed-term contracts or relationships, contracts or relationships via temporary agencies and remunerated mandates, irrespective of the nature of the services provided (Article 49(2)). Maritime legislation (Article 3(1)) only provides that it covers natural and adoptive parents employed under a contract of maritime employment (which may be of fixed-term or indefinite duration).¹⁹⁶

4. Parental leave (Clause 2)

4.1. Both pieces of transposing legislation grant at least four months unpaid parental leave to each parent for each child, as a minimum requirement. They do not affect more favourable legislation, internal regulations, collective agreements (CAs) or individual agreements that are related to parental leave or to other rights which aim to facilitate the raising of children or are connected to breast-feeding, child-care and more generally the family (Article 54(2) to (4)). The main transposing legislation grants a leave of double length to widow(er)s, unmarried parents or parents whose spouse has been deprived of parental rights; in case of separation or divorce, each parent's right is autonomous (Article 50(7)). The leave is not explicitly related to the child's guardianship, but it seems to presuppose it. Other legislation grants different leaves which prevail to the extent they are more favourable. Some examples:

Public sector: The CSC (Article 53(2)) grants a nine-month paid parental leave and alternatively a paid daily working time reduction (by two hours until the child reaches the age of two, and one hour thereafter until the child reaches the age of four); for a fourth child, the reduction lasts two more years. These more favourable provisions prevail.

The CSC grants an additional one-month paid leave to widow(er)s, unmarried or divorced parents, provided they have the child's guardianship, or to parents disabled by at least 67 %, and alternatively six more months of paid reduced working time (Article 53 (2), (3), (5)). These more favourable provisions prevail.

If the spouse of a parent covered by the CSC works in the private sector, the leave or the reduced working day is granted to him/her to the extent that it exceeds his/her spouse's rights (Article 53(3) CSC). For example, if the spouse in the private sector receives a four-month parental leave, then the spouse covered by the CSC receives only five months, although the leave granted by the CSC is nine months. Therefore, the rights are not individual.

Following the *Chatzi* case,¹⁹⁷ Act 4210/2013¹⁹⁸ added a provision to Article 53(2) CSC granting an additional paid six-month leave for each child beyond the first one, in case of multiple births.

The same Act repealed a CSC provision which deprived fathers of their parental leave if their wife did not work, unless she was seriously ill or disabled. However, in the Code of Regulation for the Courts and the Status of Judges (Judges Code),¹⁹⁹ such a provision remains and applies to both spouses by virtue of Act 4239/2014 (below).

Police: the CSC provisions on paid parental leave and the reduced working day apply.²⁰⁰

¹⁹⁶ Code of Private Maritime Law (Act 183/1073), OJ A 261 of 1 October 1973.

¹⁹⁷ Case C-149/10 *Zoi Chatzi v Ipourgos Ikonomikon* [2010] ECR I-8489.

¹⁹⁸ OJ A 254 of 21 November 2013. CJEU Case C-149/10 *Zoi Chatzi v Ipourgos Ikonomikon* [Minister of Finance] [2010] ECR I-534. See European Network of Legal Experts in the Field of Gender Equality, S. Koukoulis-Spiliotopoulos 'Greece' in: *European Gender Equality Law Review 1/2011*, European Commission 2011, pp. 78-83, available at: http://ec.europa.eu/justice/gender-equality/files/egelr_2011-1_en.pdf, accessed 6 April 2014.

¹⁹⁹ Act 1756/1988, OJ A 35 of 26 February 1988.

²⁰⁰ Article 10A of Decree 27/1986, as added by Article 1 of Decree 70/2011, OJ A 169 of 4 August 2011.

Military personnel: The CSC provides for a five-month paid maternity leave (two months before and three months after confinement). Female military personnel receives the entire five-month leave until confinement and the CSC paid parental leave starts immediately thereafter for both parents.²⁰¹ This does not serve the purpose of maternity leave (protecting the woman's biological condition during and after pregnancy and the special relationship between her and her child over the period which follows pregnancy and childbirth), since the woman has no leave of her own after childbirth.²⁰² Moreover, the right to maternity leave must not be affected or substituted by the right to parental leave whose purpose is different.²⁰³

State school teachers: only women, not their male colleagues, received the CSC nine-month paid parental leave before the transposition of the Directive.²⁰⁴ Although the relevant provisions have not been formally modified, in practice male state school teachers are also granted the nine month leave on a transferable basis, as it results from circulars of the Ministry of Education.²⁰⁵

Judges: Article 44(21) of the Judges Code entitled female judges to the nine-month paid parental leave granted at that time by the CSC to women only. This provision was added following CS (Plen.) judgment 3216/2003,²⁰⁶ which upheld the entitlement of female judges to this leave, relying on Article 21(1) and (5) of the Constitution (No. 1.1 above) and on the EU principle regarding the 'harmonisation' (as the CS termed it) of family and professional life and Directive 96/34 as an expression of this principle. The CS, relying on the same rules, plus Article 4(2) of the Constitution (gender equality) and Directive 76/207,²⁰⁷ also upheld the right of male judges to the nine-month parental leave. Since then, female and male judges received this leave. Article 89 of Act 4055/2012²⁰⁸ implementing Directive 96/34 with respect to judges extended the leave to male judges, but reduced it to five months for both parents. The CS (judgments 3590 and 3591/2013 (Plen.))²⁰⁹ ruled that this reduction was in conflict with Article 21(1) and (5) of the Constitution which it interpreted in light of the EU principle regarding the harmonisation of professional and family life, Directive 2010/18 and Articles 20 (equality before the law), 24 (rights of the child) and 33 (family and professional life) of the EU Fundamental Rights Charter. Article 8(1)(A) and (B) of Act 4239/2014,²¹⁰ replaced the above provision. It aligned the judges' leave with that of the CSC, entitled those who had received the curtailed leave to another four months until the child reached the age of three and granted an additional six-month leave in case of multiple births, as stipulated in the CSC (see above). However, it deprived of the parental leave the judges whose spouse did not work, unless he/she was seriously ill or disabled (see above regarding the CSC); the right is therefore not individual.

Private sector: Article 5 of Act 1483/1984 (No. 1.5. above) which granted a parental leave of three and a half months, was explicitly repealed by the main transposing legislation

²⁰¹ Articles 8-9 of Ministerial Decision F.400/32/82424/S.343, OJ B 1139 of 3 June 2011.

²⁰² CJEU Cases C-320/01 *Busch* [2003] ECR I-2041, Paragraph 42; 421/92 *Habermann-Beltermann* [1994] ECR I-1657, Paragraph 21; C-32/93 *Webb* [1994] ECR I-1963, Paragraph 20.

²⁰³ CJEU Cases C-116/06 *Kiiski* [2007] ECR I-7643, Paragraph 56; C-519/03 *Commission v. Luxembourg* [2005] ECR I-3067, Paragraphs 32-33.

²⁰⁴ Article 53(2) of Act 2721/1999, as amended by Act 3687/2008, OJ A 159 of 1 August 2008.

²⁰⁵ See e.g. Ministry of Education Circular Φ.351.5/43/57822/Δ1/05.05.2014, which purports to clarify the parental leave regime applying to state schoolteachers, in accordance with the Civil Servants Code following the transposition of Directive 2010/18, paragraph D4, p. 9, available at: <http://www.mpratis.gr/014/ad050514.pdf>, accessed 15 January 2015.

²⁰⁶ See P. Petroglou 'Comments on CS 3216/2003' *Review of Social Security Law (EDKA)* 2003, pp. 900-901; and S. Koukoulis-Spiliotopoulos 'The harmonisation of family and professional life of men and women: Community and national *acquis* (CS 3216/2003) Διοικητική Δίκη (Administrative Trial) 2004, pp. 572-592 (in Greek).

²⁰⁷ Leading CS judgments 1 and 2/2006.

²⁰⁸ OJ A 51 of 12 March 2012. See Greek National Commission for Human Rights (GNCHR) 'Comments and proposals on the bill for the fair trial and its reasonable duration' (Act 4055/2012): www.nchr.gr, accessed 6 April 2014; S. Koukoulis-Spiliotopoulos 'Act 3896/2010 and Occupational Social Security Schemes. The Confusion is Heightened' *Review of Social Security Law (EDKA)* 2012, pp. 27-39 (in Greek).

²⁰⁹ On these judgments see European Network of Legal Experts in the Field of Gender Equality, S. Koukoulis-Spiliotopoulos 'Greece' in: *European Gender Equality Law Review 2/2014* (forthcoming).

²¹⁰ OJ A 43, of 20 February 2014.

(Article 54(1)). No other provision of this Act was explicitly repealed. National general collective agreements (NGCAs), which provide minimum standards for workers under a private-law contract throughout the country, granted natural and adoptive mothers, and subsidiarily fathers (i.e. fathers had to declare officially to the employer that the mother did not make use of it), a paid daily working time reduction ‘for breastfeeding and childcare’ (by one hour for two and a half years after maternity leave or two hours for one year, and one hour for the subsequent six months).²¹¹ The 2014 NGCA made this an autonomous right for fathers, even when the mother is self-employed. Either parent can make use of this reduction for the whole period or part of it, provided they notify their choice to the employer. Alternatively, a paid leave of analogous length may be agreed with the employer, whose agreement may depend on business needs, but his/her refusal may constitute an abuse of rights.²¹² The main transposing legislation does not provide for working time reduction, but, in the expert’s opinion, it does not affect these provisions, since they are more favourable (No. 4.1 above). There is no case law on this matter.

The maritime transposing legislation (Article 3(1)) grants an unpaid parental leave of four months and, if the child is handicapped by at least 67 %, five months (Article 4(1)).

There are no provisions regarding multiple births in the private sector.

4.2. The main transposing legislation sets the child’s maximum age at six (Article 50(1)); the maritime legislation sets it at five, and for a child who is disabled by at least 67 % at twelve (Articles 3(1) and 4(1)). The CSC sets it at four for the leave and the working time reduction (see No. 4.1. above); as the transposing legislation is more favourable, it has become six under the CSC, although the CSC was not formally modified.

4.3. The main transposing legislation (Article 50(3)) excludes transfer to the other parent. Maritime legislation (Article 3(2)) makes the right transferable. Under the CSC the right is freely transferable. As already explained (see point 1.5 of this report, above), the transposing legislation applies to both the private and the public sector and provides that it does not affect more favourable provisions. The leave already applying in the public sector before the transposition of Directive 2010/18 was paid and longer than the leave provided by the transposing Act (nine months), and transferable. It is this longer, transferable leave that is still granted in the public sector, as it results from circulars of the competent ministries.²¹³ The right to working time reduction granted by the CSC and the NGCA, which is not affected by the transposing legislation, in the expert’s opinion, since it is more favourable to the worker (see 4.1), is also freely transferable. There is no case law on this matter.

4.4. Maritime legislation (Article 3(2)) makes one month at least of the leave non-transferable, if both parents are either marines or crew-members of commercial ships, including passenger ships. The CSC contains no such provision.

4.5. The main transposing legislation and the maritime legislation are silent regarding surrogacy, and so is the CSC. In the private sector, parents who obtain a child via surrogacy are entitled to the same parental leave as natural parents by virtue of NGCA 2006-2007 (Clause 7 (G)), which remains in effect (see 1.5. above).

5. Modalities of application (Clause 3)

5.1. The main transposing legislation (Article 50(4)) allows that parental leave be taken in one period or piecemeal; it is silent regarding full-time and part-time take-up and regarding time credits. Maritime legislation (Article 4(1)) requires that it be taken in one full-time period, unless otherwise agreed; parents whose child is disabled for at least 67 % are entitled to piecemeal take-up, but the period of the leave cannot be divided into more than four parts.

²¹¹ NGCAs 1993, 2002-2003 and 2004-2005.

²¹² Supreme Civil and Penal Court (SCPC), Civil Section, 10/2010.

²¹³ See e.g. Ministry of Education Circular Φ.351.5/43/57822/Δ1/05.05.2014, which purports to clarify the parental leave regime applying to state school teachers in accordance with the Civil Servants Code, following the transposition of Directive 2010/18, paragraph D4, p. 9, available at: <http://www.mpratis.gr/014/ad050514.pdf>, accessed 15 January 2015.

The main transposing legislation (Article 50(4)) requires that the leave be granted by priority of requests. Parents of children with a disability or long-term or sudden illness and single parents due to death of or withdrawal of guardianship from the other parent or non-recognition (by the natural father) of a child born out of wedlock, have absolute priority.

Maritime legislation provides that, unless there is reason for postponement or the leave is requested for a disabled child (see 5.5. below and 4.1. above), it is granted one month at least after the request is notified to the captain and/or the employer; this period is extended until the vessel sails into a harbour where the parent's substitute can board it. It also allows for specific arrangements to be made by CAs regarding conditions for access to and modalities for the exercise of the right to parental leave according to the operational needs of the various categories of vessels (Article 2(2)).

The Judges Code (see 4.1. above) provides that the starting date for the parental leave is fixed by the head of court. When the leave is requested by a mother, it must start as soon as possible and not later than two months after expiry of her maternity leave; a father's request must be filed as soon as possible after expiry of the maternity leave of the mother of his child, and if she has had no maternity leave, the soonest possible after the date on which the maternity leave that she would have taken would expire. This is quite complicated in practice and in fact it leads to only one of the parents taking the leave – more probably the mother – so that the parental leave is more likely to operate as a prolongation of the maternity leave, and therefore not to serve its purpose.

5.2. There is no notice period. The main transposing legislation only requires that the parent who requests the leave specify the beginning and the end of it. For marines and judges, see above (5.1).

5.3. The main transposing legislation (Article 50(1) and (5)) and maritime legislation (Article 3(1) and (2)) require one year of continuous or interrupted employment with the same employer; the right for each child is autonomous, provided the parent has worked for the same employer for one year after expiry of the leave for the previous child.

The CSC does not require any period of previous employment; this remains unchanged.

5.4. The main transposing legislation applies to fixed-term contracts or relationships (see 3 above), but it is silent regarding successive fixed-term contracts. Maritime legislation (Article 3(3)) requires that the sum of successive fixed-term contracts with the same employer be taken into account for calculating the qualifying period.

5.5. The main transposing legislation does not provide for postponement of the leave. It only provides that it is granted by priority of requests, which must specify its beginning and end (5.1., and 5.2. above); parents employed by the same employer must inform the employer each time of their decision as to who will make use of the right first, and for how long (Article 50(4) and (6)). Maritime legislation (Article 3(7)) allows postponement of the leave when a substitute cannot be found or, from June to September, for marines employed on coastal passenger or tourist vessels, or in other exceptional circumstances related to the security of the vessel, the passengers or the cargo.

5.6. Maritime legislation (Article 2(3)) allows arrangements to be agreed with the employer in view of the operational needs of vessels with a crew of less than thirty.

5.7. Regarding parents of disabled or sick children see 5.1. above and 9. below.

6. Adoption (Clause 4)

The main transposing legislation (Article 50(8)) grants adoptive and foster parents parental leave when they adopt or foster a child up to six years old, once the procedure for adoption or foster case has been completed; if the procedure has not been completed at that age, entitlement to the leave lasts until the child reaches the age of eight. Part of the leave may be granted before that. Maritime legislation (Article 3(1)) grants parental leave for a natural or adopted child until the age of five, without any further provision for adoptive parents.

The CSC (Article 53(2)) grants parental leave and alternatively reduced working time to 'parents', without any further specification. Article 52(4) CSC grants mothers who adopt a child under six a three-month paid leave, but no parental leave. At the time when only

mothers were granted parental leave by the CSC and the Judges Code (No. 4.1. above), the CS (judgment 607/2007) held that the term ‘mother’ included adoptive mothers, who therefore were also entitled to the parental leave. The CS interpreted the CSC and the Judges Code in light of Articles 21(1) (1.1. above) and 4(1) (equality before the law) of the Constitution, the European Convention on Adoption, and Directive 96/34, also in view of Civil Code Articles 1560, 1561 and 1566, which consider adopted children equal to natural ones. Therefore, the term ‘parents’ also includes adoptive parents (mothers and fathers) in all cases; however, this must be explicitly stated in the CSC for reasons of legal certainty.

7. Employment rights and non-discrimination (Clause 5)

7.1. Both the main transposing legislation (Article 52(3)) and maritime legislation (Article 5(1), (7)) prohibit any unfavourable treatment on the grounds of an application for or the taking of parental leave and prohibit dismissal on such grounds. This means under Greek employment law that the unfavourable treatment or dismissal is deemed never to have taken place and that the worker retains his/her previous status; reintegration is not necessary.²¹⁴

7.2. The main transposing legislation (Article 52(1)) entitles workers who have taken parental leave to return to the same or an equivalent or similar job under no less favourable working conditions. Maritime legislation (Article 5(2)) contains similar provisions, but allows the return to an equivalent or similar job when returning to the same job ‘is not possible’; this is subject however to a written notice to the employer, fifteen days at least before expiry of the leave, that he/she intends to return, otherwise the worker is deemed to have resigned.

7.3. The main transposing legislation (Article 52(2)) only provides that the period of absence from work due to parental leave constitutes a period of service for calculating pay and redundancy compensation, for granting annual leave and annual leave allowance and for professional development. Maritime legislation (Article 5(4)) provides that rights acquired or in the process of being acquired on the date on which parental leave starts are maintained as they stand until the end of the parental leave. Upon the end of the parental leave, these rights apply, including changes made by national law and CAs.

7.4. Regarding the status of the employment contract or relationship, see above (7.3).

7.5. According to the main transposing legislation (Article 52(4))²¹⁵ and maritime legislation (Article 5(2)), there is continuity of entitlement to social security cover during parental leave, provided the worker pays his/her own social security contributions and those of the employer. This is the rule for unpaid leaves under Greek law, which also applies to unpaid special leaves, working time reduction and time-off. During paid leaves, working time reduction and time off, social security continues as before (see 4.1. above and 9. below). Therefore, full social security coverage during parental leave continues in the public sector only where the employee pays his/her own contribution and receives benefits, as before.

7.6. Parental leave and special leaves granted by the main transposing legislation are unpaid. Those granted by maritime legislation are also unpaid; moreover, the marines who take a leave pay their own travel expenses from and back to the ship (Articles 3(5), 6(2)).

Parental leave, working time reduction and special leaves granted by the CSC are fully paid by the employer. Time off granted by Act 1483/1984 (private sector) is in some cases paid by the employer and in other cases totally unpaid (see 4.1. above and 9. below). Therefore, non-remuneration is the rule in the private sector, while in the public sector remuneration is the rule.

7.7. There is no social security allowance replacing pay, where parental leave is unpaid.

²¹⁴ See S. Koukoulis-Spiliotopoulos ‘Gender equality in Greece and effective judicial protection: issues of general relevance in employment relationships’ *Neue Zeitschrift für Arbeitsrecht Beilage* 2/2008, pp.74-82.

²¹⁵ This provision refers to Article 40 of Act 2084/1992 of OJ A 165/1992, as replaced by Article 40 of Act 3996/2011, OJ A 170 of 5 August 2011.

8. Return to work (Clause 6)

8.1. The main transposing legislation does not provide for any changes of the working conditions of workers returning from parental leave, and nor does the CSC, which however grants reduced working time as an alternative to parental leave (see 4.1. above).

Maritime legislation (Article 5(5)) entitles marines to request changes to their working-time organisation upon their return from leave, for a period not exceeding seven days, provided the vessel's operational needs allow it in the captain's judgment.

8.2. There are no mechanisms to promote/ensure that workers and employers maintain contact during the period of leave. Maritime legislation (Article 5(6)) provides that, with a view to facilitating their return to work, marines may make arrangements with their employer regarding possibly advisable reintegration measures.

9. Time off from work on grounds of force majeure (Clause 7)

Several pieces of legislation and CAs grant 'special leaves' or time off on different grounds for each area. The relevant provisions are scattered and uneven, resulting in unequal and inadequate protection. Moreover, the grounds provided are exclusive of any other ground of force majeure 'making the immediate presence of the worker indispensable', as required by the Directive. Examples:

- a) The main transposing legislation (Article 51) grants individual rights to each natural, adoptive and foster parent of a child under eighteen who i) needs blood transfusion, dialysis or a transplant or suffers from cancer: ten working days a year, paid; ii) is hospitalised due to a disease or accident requiring the parent's presence: up to thirty days a year, unpaid, after exhaustion of the parental leave; both leaves presuppose the exhaustion of other paid leaves, except annual leave. As each leave has its own purpose, both conditions are in conflict with the Directive and must be considered non-applicable. There is no general provision on time off on grounds of force majeure, as required by the Directive. It is therefore obvious that the aforementioned two grounds are exclusive. This means that any other circumstances of force majeure, even if they are serious, do not entitle time off. For instance, if the child suffers a serious disease that does not fall under (i) and he/she is not in hospital, the parent is not entitled to time off.
- b) Maritime legislation (Article 6) states that the captain grants unpaid time off of up to 144 hours per year on grounds of force majeure for urgent family reasons and in cases of sickness or accident of a dependent family member (including natural and adoptive children, the spouse, parents and siblings) making the marine's immediate presence indispensable. This time off may be granted once or piecemeal. No timely return to the vessel after time off constitutes a ground for dismissal without compensation.
- c) The CSC provides: i) for employees with a spouse or child requiring regular blood transfusion or periodic hospitalisation, or a child suffering from a serious mental handicap or Down syndrome: a leave of up to twenty-two working days a year, transferable, paid (Article 50(2) and (3)); ii) for school visits: time-off of up to four working days a year or five days for two or more children, transferable, paid (Article 53(6) and ministerial decision implementing this provision).²¹⁶ These provisions prevail to the extent that they are more favourable than those of the main transposing legislation. However, the CSC contains no general provision on time off on grounds of force majeure for urgent family reasons.
- d) Act 1483/1984 (private sector, see 1.5. and 4.1. above) grants time off: a) in case of illness of natural, adoptive and foster children under sixteen or older children suffering from serious or chronic illness or other dependent family members:²¹⁷ up to six working days a

²¹⁶ Joint Decision of the Ministers of the Interior, Public Administration and Decentralisation ΔΙΑΔ/Φ.53/12222/οικ.20561, OJ B 1613 of 17 August 2007.

²¹⁷ I.e. the spouse and unmarried brothers and sisters who, due to acute, serious or chronic illness or disability or advanced age are unable to care for themselves, provided they are in the worker's care and their income does

year, eight for two children, fourteen for three and more, non-transferable, unpaid (Article 7); b) for school visits: up to four working days a year, transferable, paid (Article 9); c) for mentally or physically disabled children, irrespective of age: a transferable working day reduction by one hour with analogous pay cut (Article 8), in undertakings with at least fifty workers. These provisions apply in the private sector besides the transposing legislation, but not to marines; they should also apply in the public sector (Decree 193/1988 still on the books) where there is no time off ((c) above), but we do not know what happens in practice.

10. Final provisions (Clause 8)

10.1. An adequate social security allowance for parents during parental leave and time off should be required by the Directive, as an incentive for take-up (Directive 92/85 provides an example), as well as an allowance for the employers as an incentive to grant the leave and time off. Moreover, foster parents should be included in the scope of the Directive.

10.2. The main transposing legislation goes further than the Directive regarding foster parents and remunerated mandates as well as special leaves, but the latter are granted subject to conditions which are not allowed by EU law (see e.g. 4.1. (military) and 9(a) above). Public sector legislation (CSC) goes further regarding pay and length of parental leave, paid working day reduction and paid special leaves (4.1. and 9(c) above). Private sector legislation goes further regarding time off (9(d) above). Yet, what is most important is that Greek legislation, even when it formally goes further than the Directive, does not create the necessary legal certainty. The rules on leaves remain complex, unequal and scattered (see 1.3. above). As it is quite difficult for people to know their rights, and moreover, in the current situation, few dare complain, case law which would clarify the situation is scarce (see also Section 13, below).

11. Sanctions (Article 2)

Remedies and sanctions in civil and administrative cases are proportional and dissuasive, as they result *ipso jure* in *restitutio in integrum* (see Section 7.1. above). The main transposing legislation (Article 53) has added administrative sanctions (fines) to be imposed by Labour Inspectors, as well as disciplinary sanctions for the public sector, both subject to recourse to administrative courts. Maritime legislation (Article 8) provides for similar sanctions.

12. Case law

12.1. Case law mostly concerns cases initiated by public servants or judges who enjoy constitutional protection of personal and functional independence and are therefore protected from all kinds of victimisation. Examples of provisions which are contrary to CJEU case law and are still on the books are mentioned above (4.1: military personnel, state school teachers, judges; 4.3.: no transferable period (main transposing legislation); 4.5.: no provisions on surrogacy in the public sector and in maritime work; 5.4.: no provisions on successive fixed-term contracts in the transposing legislation; 6.: no explicit mention of adoptive parents in the CSC; 7.3.: no general provision about retention of rights in the main transposing legislation; no general provision on time-off on grounds of force majeure in the main transposing legislation and the CSC). There is no case law on these matters.

12.2. Greek courts play a significant role in the interpretation of national provisions according to EU law and they even go further than EU law. Examples of case law that is more favourable than the Directive: CS judgments 3590 and 3591/2012 (4.1. above: judges) and the Administrative Court of Appeal (ACA) of Thessaloniki which made the preliminary reference to the CJEU in *Chatzi*; they upheld the parents' right to additional leaves in case of multiple

not exceed the yearly income of an unqualified worker as stipulated by current regulations (Article 2 of Act 1483/1984).

births, also relying on the Fundamental Rights Charter and international conventions. The ACA judgment applied the CJEU judgment in *Chatzi* in the best possible way in view of the situation in Greece.²¹⁸

13. Practice and other relevant issues

13.1. There are no data on the take-up of leaves. It seems that in the public sector they are often used and that take-up by fathers increases. In the private sector they are seldom taken, mainly due to the fact that they are unpaid and that, in particular in the framework of the crisis, employers are reluctant to grant them and workers do not dare request them, a fear that increases along with soaring unemployment which is much higher for women. According to the Labour Inspectorate's 2012 annual report, about 1.2 % of all employed women and 0.02 % of employed men in the private sector took parental leave.²¹⁹

13.2. The above are the only data available.

13.3. We are not aware of any specific positive action measures to promote a more balanced share of family responsibilities between both parents in relation to these leaves.

13.4. The main gap is the lack of remuneration or social security benefits to encourage take-up.

13.5. The Labour Inspectorate, which has wide powers of investigation and the power to impose fines, is not able to adequately perform its duties, due to acknowledged shortages in personnel and material means, which are worsening due to austerity measures (budget cuts affecting these means, including reduction of personnel in the public sector and drastic pay cuts).²²⁰

13.6. The main problem in Greece, which this report has attempted to emphasise, is the lack of legal certainty due to a legislative maze in matters of parental leave, and particularly also in social law. The provisions are complex, fragmented, and unequal; and scattered in several pieces of legislation that are often modified in a mostly non-transparent way. It is therefore not clear which provisions are in effect in a particular area and for a particular matter. This is exacerbated as a practice of 'omnibus laws' has been established (see 1.3. of this report, above) and many provisions are implicitly replaced or modified. As a result, one has to search into many other pre-existing pieces of legislation in a desperate quest for the legislation in effect. Complicated legal reasoning is resorted to, without certainty that the conclusion is correct. This is in particular true for the public sector where the transposing legislation has not modified or replaced any provision, so that the CSC, along with various other pieces of legislation, are still in effect (as reported in particular in 4.1. and 5.1. of this report, above).

13.7. There is still an irrational and unlawful practice applied in the civil service when the leave is requested not upon expiry of the maternity leave, but later or by a parent whose children were born before he or she was appointed in the civil service. Although the child is still under the prescribed age and the parent made no use of the reduced working day (an alternative to parental leave), a fictitious use of the reduced working day is taken into account and the leave is proportionately curtailed. The Legal Council of the State²²¹ agreed with this practice, which is still applied, as it results from circulars of competent ministries.²²²

²¹⁸ ACA 1842/2010. See: European Network of Legal Experts in the Field of Gender Equality, S. Koukoulis-Spiliotopoulos 'Greece' in: *European Gender Equality Law Review 1/2011*, pp. 78-83, European Commission 2011, available at: http://ec.europa.eu/justice/gender-equality/files/egelr_2011-1_en.pdf, accessed 7 May 2014.

²¹⁹ See Labour Inspectorate Annual Reports: <http://www.ypakp.gr>, accessed 10 April 2014.

²²⁰ See Labour Inspectorate Annual Reports: <http://www.ypakp.gr>, accessed 10 April 2014.

²²¹ Opinion 64/2008. The Legal Council of the State gives opinions at the request of public authorities which are not binding, unless the competent Minister endorses them, which was the case with this opinion.

²²² See e.g. Ministry of Education Circular Φ.351.5/43/57822/Δ1/05.05.2014, which purports to clarify the parental leave regime applying to state school teachers under the Civil Servants Code, following the transposition of Directive 2010/18, paragraph D4, p. 9, available at: <http://www.mpratis.gr/014/ad050514.pdf>. This circular refers to Minister of Home Affairs Circular ΔΙΔΑΔ/Φ.51/590/οικ.14346/29.05.2008, p. 5. The latter, which is accessible at: <http://www.poeota.gr/download/14346-2008.pdf>, states that it complies with the above mentioned Legal Council of the State Opinion 64/2008, Both circulars accessed 15 January 2015.

Therefore, although the main transposing legislation stipulates that it applies to both the private and the public sector, in fact it is mainly in the private sector where the transposing legislation has brought visible changes, through the repeal of Act no. 1484/1984. In particular, the changes concern the increase of the leave from three and a half to four months, and the increase of the child's age from three and a half to six years.

HUNGARY – *Beáta Nacsa*

1. Context

The protection of motherhood, fatherhood and family relationships is one of the primary aims of the newly re-elected centre-right Orbán Government, partly in order to maintain traditional values associated with families, and partly in order to prevent any further decrease of the birth rate in Hungary.

The basic structure of parent-related entitlements follows the pattern laid down in the socialist period of the country. The basic regulatory logic has remained unchanged, as well: periods of leave are regulated by the Labour Code, while the payments which are provided for these periods are regulated by social security laws and (with the exception of paternity leave) are paid by social security.

Hungarian legislation generously provides for different types of leaves in order to facilitate the reconciliation of work, private and family life, for both natural and adoptive parents. Both parents can take most of these leaves, however in practice they are taken predominantly by mothers.

Short-term leaves are granted for the period of receiving IVF treatment in a healthcare institution, for the duration of mandatory pregnancy-related medical examinations, and for nursing the child until the end of the ninth month for one or two hours daily (in case of one child and twins). Upon the birth of his child, the father is entitled to five days of leave (seven working days in the case of twins), until the end of the second month from the date of birth, which is allocated on the days as requested by the father (paternity leave). The leave is also provided if the child is stillborn or dies.²²³ The leave is paid from the central budget.²²⁴

As far as the long-term leaves are concerned, mothers are entitled to twenty-four weeks of maternity leave, of which four weeks are supposed to be provided prior to the expected date of birth.²²⁵ Following maternity leave, in theory, employees (mothers and fathers alike) are entitled to parental leave.²²⁶

Furthermore, every calendar year both parents are entitled to extra holiday time calculated according to the number of their children under the age of sixteen: two working days for one child, four working days for two children – with a total of seven working days for more than two children.²²⁷ These extra holidays enable parents to spend more time with their child(ren) during school holidays.

2. Implementation of Directive 2010/18

The regulations designed to transpose the Directive on parental leave are contained in the Labour Code (Act XXII of 1992, and since 1 July 2012, Act I of 2012). In this regard, the

²²³ Article 118(4) of the Labour Code.

²²⁴ 305/2002. (XII. 27.) Government Decree on payment of costs in relation to father's leave due to childbirth (*a gyermek születése esetén az apát megillető munkaidő-kedvezményel összefüggő költségek megtérítéséről*).

²²⁵ Article 127(1)-(4) of the Labour Code.

²²⁶ Articles 128 and 130 of the Labour Code.

²²⁷ Article 118(1) of the Labour Code.

personal scope of the Labour Code covers public employees of hospitals, schools, universities, museums, etc.²²⁸

For public servants, the implementing regulations are contained in Act CXCIX of 2011 on public servants. The regulations are substantively identical in all three Acts.

3. Purpose and scope (Clause 1)

The national legislation is applicable to both the public and the private sector, as was mentioned in Section 2.

The transposing legislation (Labour Code; LC) covers part-time and fixed-term workers, and employment relationships with a temporary agency.

Since 2009, Hungarian labour law, however, regulates a special category of employment, ‘simplified employment’,²²⁹ to which the parental leave regulations are not applicable, which means that those employees fall outside the personal scope of the Directive. The ‘simplified employment relationship’²³⁰ is regulated by paragraphs 201-203 of Labour Code and Act LXXV of 2010 on simplified employment. Simplified employment covers agricultural and seasonal tourist work (which does not exceed 120 days per calendar year), and short-term fixed-term contracts (which does not exceed five consecutive days, or fifteen days in a month or 90 days in a calendar year). These employees are not entitled to maternity leave nor to parental leave,²³¹ and are not considered an ‘insured’ person by healthcare regulations, with the exception of work-related accidents.²³² Consequently, employees in a simplified employment relationship do not accrue healthcare service time, and are not eligible for certain services to which other employees would be entitled (financial and in-kind healthcare services alike). The regulation on simplified employment is not compatible with Clause 1(3) of Directive 2010/18/EU (further on Framework Directive), because these specifically defined part-time workers are excluded from the coverage of the parental leave regulations. The regulation does not specify any period of time following which workers with simplified employment have a right to parental leave’.

Executive employees are not entitled to parental leave, either. Mothers employed in an executive position are entitled to take a twenty-four week-long maternity leave, but neither male nor female employees are entitled to take parental leave. The law on executive employees was modified by Article 175 of Act CCLII of 2013 on the modification of certain Acts due to the entry into force of the new Civil Code. Article 175(21) (which modified Article 209 of the Labour Code, discussed below) entered into force on 15 March 2014. According to Article 209 of the LC, the employment contract of the executive employees is no longer allowed to deviate from Article 127, which provides mothers with 24 weeks of maternity leave. Consequently, female executives became entitled to the four months leave by this modification, since 15 March 2014. If the executive is male, he is entitled to only five days (seven days in case of twins) paternity leave. But he is not entitled to a one month leave because first, he can not take maternity leave under the Article 127 as he is not a ‘mother’, and second, he has no right to parental leave (following the mother’s maternity leave until the child is aged three years). This is because Article 128, which prescribes this leave, is not applicable to his employment relationship. This regulation violates Clause 1 of the Framework Directive.

Under Hungarian law, the notion of executive employees covers a wide range of employees. Paragraph 1 Article 208 of the (new) Labour Code already goes much further than

²²⁸ Public employees are employees who work for municipalities and the Government, but who are not entitled to act on behalf of the State.

²²⁹ The first regulation related to this issue was Act CLII of 2009, which was replaced by Act LXXV of 2010.

²³⁰ The number of workers employed in simplified employment grows dynamically. Between 2010 and 2013 the number of workers in simplified employment grow two and a half times, and reached almost 200.000 by June 2013. Data published by the Ministry of National Economy. <http://www.munkajog.hu/rovatok/hirek/nepszeru-az-egyszerusített-foglalkoztatás>, accessed 10 November 2014. It is 5 % of the total working population.

²³¹ Point J in Article 203 of the Labour Code.

²³² Paragraph (1)a of Act LXXV of 2010 on simplified employment (*egyszerűsített foglalkoztatásról*).

the traditional definition, when stating that any worker could be considered to be an executive employee whose work is directly controlled by the CEO, and all those who may replace the CEO fully or partly. In this regard the partial replacement of the CEO raises further questions, especially with regard to the so-called ‘internal representation’ of the company, which is very frequent in employment relationships.²³³ Even direct work supervisors partly replace the CEO with regard to the direct supervision of work and could therefore theoretically lack any legal protection provided by labour law. Paragraph 2 goes even further when stating that the employee and the employer may agree in the employment contract that the rules of managerial employees will be applied to any employee if he/she has ‘a job of great importance with regard to the employer’s operation’, or has ‘a job of greater confidentiality’ provided that his/her basic salary is at least sevenfold of the applicable minimum wage. On the basis of recent court practice which considers a dismissal fair if the employer proves that they have lost confidence in the employee, we could expect that the criteria of ‘importance’ and ‘confidentiality’ will not de facto limit the application of Paragraph 2 Article 208, but the single relevant limiting factor will be the sevenfold amount of the minimum wage (approximately EUR 2 344, which is equal to HUF 715 000).²³⁴ Taking into account the power structure of the employment relationship, the employer can almost freely determine who would be considered to be an executive employee among those earning enough to fall within the threshold based on the minimum wage, and would consequently be employed without being able to take parental leave (and enjoy several further employment rights).

4. Parental leave (Clause 2)

Following the twenty-four week maternity leave, employees (mothers and fathers alike) are entitled to parental leave which could be taken until the child reaches the age of three, or the age of ten for a seriously sick child. Any of them, or both of them could take this leave, for the purpose of taking care of their child, until the child reaches the age of three or, in case of a permanently and seriously sick child, until the age of ten.²³⁵ There is no case law on whether or not surrogate parents are entitled to parental leave.

The duration of parental leave has not been modified in relation to the transposition of the Directive. Employees of the public and the private sectors are entitled to parental leave of the same duration. The same age limit is applicable for adopted children. Both parents have an individual right to take parental leave, although only one of them is entitled to social security payments; and only mothers are entitled to job protection, if both parents would take the parental leave.²³⁶ The restriction of dismissal applies only to mothers and single fathers, if the parent does not take all three years of maternity/parental leave, but returns to work before the end of the legally stipulated maximum possible period of leave (see below in Section 7).²³⁷ The consideration missing from Hungarian legislation is that one month of parental leave is lost if the parent who is less involved in taking care of the child does not take it. Hungarian legislation in this sense does not ‘sanction’ the parents if only one of them (usually the mother) takes all of the parental leave. Legislation here strictly reinforces the traditional role of women in society and should be considered discriminatory in many regards. Partly because the role and obligation to take care of a child are generally attached to the mother; and partly because the ‘single father’ only replaces the mother if the mother is not able (has died), or is unwilling (has left the family), to fulfil her caring obligations. Furthermore, married fathers

²³³ According to general practice, for more than a few dozen employees, the execution of managerial rights and obligations are shared between various managerial levels from the top executive down to the direct work supervisors.

²³⁴ The national minimum wage in 2014 is EUR 334.50 (HUF 101 500; calculated according to the Hungarian National Bank’s exchange rate of 29 May 2014); Government Decree 483/2013. (XII. 17.). A salary of HUF 715000 is approximately three times the average salary and is paid to a wide range of employees from medium-rank managers to professionals with a university degree in the private sector, especially in multinational enterprises.

²³⁵ Articles 128 and 130 of the Labour Code.

²³⁶ Articles 65 (3)(c) and (6) of the Labour Code.

²³⁷ Article 66 (6) of the Labour Code.

do not enjoy protection against dismissal during and following parental leave until the child reaches the age of three on an equal footing to that of mothers.²³⁸ Consequently, the adoption of the Directive did not change the traditional pattern that mothers take care of the child during the whole period of parental leave.

5. Modalities of application (Clause 3)

The modalities of application are not expressly regulated by the Labour Code, although full-time leave is assumed by the regulations. It is also possible to shift back and forth between parental leave and work.

The employee must convey the request for parental leave in writing, at least fifteen days in advance. The parental leave ends at the time the employee has indicated, or at the earliest on the thirtieth day from the date of delivery of the legal act for the termination of leave.²³⁹ These regulations are applicable to all firms, regardless of their size. The 15-day and 30-day notice periods are considered to be long enough so as to enable the employer to adjust its needs for workforce to the request of the employee.²⁴⁰ Small and medium-sized employers frequently argue that they are not able to meet these legal expectations as no job vacancy could be kept waiting for the parent's return into the original job after three years of parental leave. The shortness of the notice period makes the problem even more severe. Still, if the employer and the employee cooperate during the parental leave and the employee participates in retraining programmes the re-employment could be made much smoother.

All employees are entitled to parental leave, regardless of their length of service. Employees in seasonal and short-term fixed-term contracts are not eligible, as was indicated above in Section 3.

The parents of a permanently and seriously sick child are entitled to parental leave until the child reaches the age of ten.²⁴¹

6. Adoption (Clause 4)

Adoptive parents enjoy the same rights as natural parents.

7. Employment rights and non-discrimination (Clause 5)

Article 8(1) point 1. of Act CXXV of 2003 on Equal Treatment and Promotion of Equal Opportunities (abbreviated in Hungarian as: Ebktv.) prohibits direct and indirect discrimination, harassment, and unlawful segregation on the basis of pregnancy, motherhood and fatherhood. Consequently, the law provides legal protection for employees against unlawful actions due to the taking of parental leave. Sporadic data suggest, however, that in practice it must be quite frequent that parents (mothers, who usually take the parental leave) are discriminated against because of taking parental leave.²⁴²

The duration of maternity and parental leave is considered time spent in employment. Following the expiry of maternity or parental leave, under the new LC the employer is no longer expressly obliged to re-employ the employees in their original job. The regulations are rather vague and ambiguous, and raise the possibility of violation of Clause 5 of Directive 2010/18/EU. If the employer dismisses the parent unlawfully, the employee may claim his/her reinstatement into his/her original job, according to Article 83 of the LC. Furthermore, according to Article 59, upon the employees' return from maternity and parental leave, the employer is obliged to offer to the employee a modification of his/her wage, consistent with the increase of the average annual wage for employees in the same position. In the absence of

²³⁸ Articles 65 (3)(c), (6) and 66(6) of the Labour Code.

²³⁹ Article 133 of the Labour Code.

²⁴⁰ Article 133 of the Labour Code.

²⁴¹ Articles 128 and 130 of the Labour Code.

²⁴² See further: K. Koncz 'Munkahelyi diszkrimináció' ('Discrimination at the workplace') *Munkaiügyi Szemle Part I* (2006/1), pp. 11-14; and *Part II* (2006/2), pp. 16-19.

employees who work in the same position, the rate of actual annual wage increases implemented by the employer applies.²⁴³

If the mother or single father returns to work before the child reaches the age of three, instead of protection, restriction on dismissal is applied. The form of such restriction varies according to the actual reason for dismissal. If the reason for dismissal is related to the employee's behaviour, it must be so serious that it could serve as basis for dismissal with immediate effect. If the reason for dismissal is related to either the capabilities of the employee or the operation of the employer, the employee could be dismissed only if there is no vacancy at the employer's given premises which corresponds to the capabilities, practice and qualification used by the employee in his/her current job.²⁴⁴

Executive employees (either male or female) are not entitled to parental leave by law, as was discussed above in Section 3. Even if they earn a right to parental leave through a contract concluded with the employer, the legal protection against dismissal will not apply to them either, unless otherwise stipulated in the contract itself.

The employer does not pay parental and maternity leaves, but one of the parents might be entitled to social security allowances.²⁴⁵ For maternity leave confinement benefits are paid, the amount of which is equal to 70 % of the average daily pay of the women (with no ceiling on payments).²⁴⁶ For the subsequent parental leave, two types of parental benefits are provided: childcare benefits and childcare fee. Both are family entitlements, except for the childcare fee until the child reaches the age of one, which is provided only for (insured) mothers. The child-care benefits are a flat-rate amount, equal to the amount of the minimum old-age pension, and are paid until the child reaches the age of three.²⁴⁷ The childcare fee is paid to insured parents only, from the end of the maternity leave until the child reaches the age of two. The amount of it is equal to 70 % of average daily earnings, with a ceiling of twice 70 % of the minimum daily wage.²⁴⁸

The rules on childcare fee have been modified in two regards since January 2014. After the child reaches the age of one, the ban to work full time whilst receiving the childcare fee has been lifted, which might increase the number of men on childcare fee. Young parents are now entitled to childcare fee if they give birth during or shortly after attending colleges and universities. The aim of this new law is to decrease the rather high age at which Hungarian college/university-educated women now give birth to their first child.²⁴⁹

8. Return to work (Clause 6)

If employment is continued following the conclusion of parental leave, the employer is obliged to amend the employment contract from full-time to part-time for any employee who has a child under three years of age, upon the employee's request. In practice this usually happens when the employee returns from parental leave. According to Article 61(1) point a. of the LC, employers inform workers concerning jobs in which such modification is available. The employee may propose a modification to his/her contract, to which the employer is obliged to respond within fifteen days in writing. The response of the employer falls within his/her prerogatives, although the general rules of law must be applied, including rules on equal treatment and prohibition of misuse of law. The only case when the employer is obliged to accommodate the employee's request is when the parent returns from parental leave before the child's third birthday and requests part-time employment equal to half of the normal

²⁴³ Article 59 of the Labour Code.

²⁴⁴ Article 66(6) of the Labour Code.

²⁴⁵ Article 25 (1)–(2) of Act LXXXIV of 1998 on the support provided for families (one parent may get one form of allowance after one child).

²⁴⁶ Articles 40-42 of the Act LXXXIII of 1997 on the providing of mandatory health insurance (on confinement benefits).

²⁴⁷ Articles 20-22 of the Act LXXXIV of 1998 on the support provided for families (on child-care benefit).

²⁴⁸ Articles 42/A-42/E of the Act LXXXIII of 1997 on the providing of mandatory health insurance (on child care fee).

²⁴⁹ Articles 42/E of the Act LXXXIII of 1997 on the providing of mandatory health insurance.

working hours (daily four hours).²⁵⁰ It seems unnecessary to restrict the possible volume of part-time work to four daily hours of working time. The employer is not obliged to accommodate the parent's request for part-time work if the volume of the daily part-time work is not four hours, but shorter or longer. Furthermore, there is no obligation to re-modify the contract back to full-time employment upon the request of the employee.

9. Time off from work on grounds of force majeure (Clause 7)

Hungarian law accommodates the needs of workers to be away from work on grounds of force majeure for urgent family reasons. Article 55(1) point j. of the Labour Code exempts the employee from the requirement of availability and from work due to personal or family reasons. The application of this article is not limited in terms of time; however, the employee must convince his/her employer about the urgency of the situation. Otherwise, (s)he might risk being dismissed with immediate effect because of failing to meet the obligation to be available for work.

10. Final provisions (Clause 8)

Since the transition period of 1989-1990, the entitlements have been reorganised and reduced to a certain extent, but in many regards they are still above the minimum standards set by EU law. However, there are also many areas where the Hungarian legislation does not meet the minimum standards as set by EU law. The extremely widely defined group of executive employees – seasonal workers and employees employed on short-term fixed-term contracts (employees of simplified employment relationship) – are excluded from the enjoyment of parental leave. Furthermore, the concept of the one non-transferable month is missing from Hungarian legislation: no month of leave will be lost if only one parent (the mother) takes all of the parental leave. Although the length of maternity leave and parental leave (three years total) is generous, in reality the implementation of Directives 1996/34 and 2010/18 has always been imperfect (for socio-legal aspects please refer to point 13 of this report, below). Married or cohabiting fathers are discriminated by the new labour legislation, because they are not protected against dismissal while being on parental leave with the mother,²⁵¹ and following the return from the leave, the protection from dismissal is granted only to mothers and single parents until the child reaches the age of three.²⁵² Although the Labour Code provides for parental leave that can be taken by any or both of the parents depending on their decision as an individual right, only one of them is entitled to social security payments. As a result, the law supports and reinforces the established practice of mothers predominantly taking parental leave.

11. Sanctions (Article 2)

As discussed above in Section 7, mothers and single fathers on (and following) parental leave enjoy legal protection against dismissal, until the child reaches the age of three. If the employer still dismisses these parents, the dismissal shall be deemed to be unfair (illegal) and the employee is entitled to reinstatement in his/her previous job. Compared to previous legislation, the amount to be paid to the reinstated employee in lost wages has been reduced from the actual monetary loss arisen to a maximum of one year's 'payment for non-worked periods' (*távolléti díj*).²⁵³ The same sanctions apply if the employment relationship is

²⁵⁰ Article 61(3) of the Labour Code.

²⁵¹ Article 65 (6) of the Labour Code

²⁵² Section 66 (6) of Act I of 2012 on the Labour Code.

²⁵³ According to previous legislation (Act No. XXII of 1992), the employee was entitled to all her lost wages, calculated based on her average salary. Now, according to the rules on calculation of the *távolléti díj*, it is equal to the worker's basic salary in most cases.

terminated on discriminatory grounds.²⁵⁴ In this regard, the expert considers the sanctions to be effective, proportionate, and dissuasive.

The above-mentioned legal protection does not cover the extremely widely defined group of executive employees (either male or female). It does not apply either to employees in a simplified employment relationship. Both were discussed above in greater detail in Section 3.

Parental leave related legal claims are processed by labour courts. If issues of discrimination are involved in the case, the decision of the employer might be challenged before administrative and labour courts,²⁵⁵ or before the Equal Treatment Agency (ETA).

12. Case law

Employers quite frequently violate their obligation to not dismiss mothers and (single) fathers during parental leave and following parental leave, until the child reaches the age of three. If the employee brings the case to court, case law provides protection against this violation of law. Still, sporadic trade union data and information gained through women's movement events suggest that there is great latency in this regard: when the employer expresses that they do not want to employ the mother any further, but rather would like to terminate the relationship by mutual consent, many women agree with it. The reasons of the women's consent vary greatly. Sometimes it is given because of lack of relevant legal information, sometimes because of being afraid of the possibility of being harassed at the workplace. Many times women are so overloaded with struggling everyday duties that they do not want to expose themselves the additional stress of litigation.²⁵⁶

13. Practice and other relevant issues

The societal norms are contrary to the ideas expressed in Directive 2010/18 on the balanced participation of women and men in family and working life. Public opinion has long been against the employment of mothers with young children. Mothers are not willing to return to work before their children reach the age of two or three because of traditional attitudes.²⁵⁷ In this sense, the regulations on generous parental allowances and attitudes towards caring for a child mutually reinforce each other in Hungary. In line with parental leave policies that allow mothers to stay at home until the child reaches the age of three, the majority of the population tends to agree with the idea that the development of young children is harmed if mothers return to work. Only 5-6 % of parents on child-care benefit are fathers. However, as recent research has revealed, the social norm of 'mothers staying at home for three years' is flexible, and is at least partly maintained by the lack of family-friendly workplaces and also by a serious shortage of childcare facilities for children under the age of three.²⁵⁸

The number of places in nurseries is rather limited: only 9 % of children between the age of 0-3 attend nurseries.²⁵⁹ Therefore parents (usually mothers) are forced to stay at home with the child until the child reaches the age of three, when the entitlement to go to (the more widely available) kindergarten becomes applicable. For the third year of parental leave, however, only the very low flat-rate child-care benefits are available, which hardly provide mothers and their children (especially single mothers) with a sufficient income.

²⁵⁴ Article 83(a) of the Labour Code.

²⁵⁵ Article 285(3) of the Labour Code.

²⁵⁶ For information on high latency see K. Koncz 'Munkahelyi diszkrimináció' ('Discrimination at the workplace') *Munkaiügyi Szemle Part I* (2006/1), pp. 11-14; and *Part II* (2006/2), pp. 16-19..

²⁵⁷ Zs. Drjenovsky 'Kismamák a munkahelyen, avagy hogyan számíthat a munkahely a nőkre a gyermekvállalást követően?' ('Mothers at work, or how can an employer count on women after childbirth?') *Munkaiügyi Szemle*, 2010/2: 95-102 (2010).

²⁵⁸ Zs. Blaskó 'Három évig a gyermek mellett – de nem minden áron. Közvélemény a kisgyermekes anyák munkába állásáról' (Stay at home for three years – but not at all costs. Social values on employment of mothers of young children in Hungary), *Demográfia*, 2011/1: 23-45 (2011).

²⁵⁹ Central Statistical Office *Gyermekvállalás és gyermeknevelés (Child-bearing and child-rearing)* KSH, April 2011, available at: <http://www.ksh.hu/docs/hun/xftp/idoszaki/pdf/gyemekvallasneveles.pdf%202013-08-17>, accessed 15 May 2014.

ICELAND – *Herdís Thorgeirsdóttir*

1. Context

The Act on Maternity/Paternity and Parental Leave No. 95/2000 (the Act) applies to parents working in the domestic labour market and concerns the grant of maternity/paternity leave and parental leave. It applies to parents who are employed by others or are self-employed.

Each parent has an independent entitlement to maternity/paternity leave for up to three months for reasons of birth, primary adoption or the reception of a child for permanent foster care. This entitlement is not assignable, which means that if one of the parents decides not to use his or her leave it cannot be transferred to the other parent. In addition to the three months leave to which each parent is entitled, the parents also have a joint additional three months, which either parent may draw in its entirety or which the parents may divide between them.

The Act also applies to parents who are not active in the labour market and parents attending full-time educational programmes (students) receiving a maternity/paternity grant.

The aim of this Act is to ensure a child's access to both of her/his parents and furthermore to enable both women and men to reconcile work and family life.

2. Implementation of Directive 2010/18

Council Directive 2010/18/EU has been fully implemented into the following Icelandic legislation:

- Act No. 95/2000 on Maternity/Paternity Leave and Parental Leave;
- Act No. 136/2011 amending Act No. 95/2000 on Maternity/Paternity Leave and Parental Leave;
- Act No. 10/2008 on Equal Status and Equal Rights of Women and Men;
- Act No. 22/2006 on Payments to Parents of Chronically Ill or Severely Disabled Children.

In light of the above, it is correct to say that no formal transposition was required in Icelandic legislation after Directive 2010/18.

3. Purpose and scope (Clause 1)

The Act on Maternity/Paternity Leave and Parental Leave No. 95/2000 as amended by later acts, applies to the rights of parents working in the domestic labour market, in both the public and the private sector, to be granted maternity/paternity leave and parental leave. It applies to parents who are employed by others or are self-employed. It also applies to parents who are not active in the labour market and parents attending full-time educational programmes receiving a maternity/paternity grant. It hence applies to part-time workers, fixed-term contract workers and persons with a contract of employment or employment relationship with a temporary agency. An employee under the Act No. 95/2000 refers to anybody who is employed in a salaried position in the service of others amounting to a least 25 % of a full-time position each month. A self-employed individual refers to anybody who works for herself/himself, irrespective of the type of company, to the effect that she/he is obliged to pay an insurance levy every month, or in some other form decided by the tax authorities. Full-time studies, under the Act, mean 75-100 % continuous studies, practical or theoretical, in a recognised educational institution within the ordinary educational system in Iceland, lasting at least six months. Furthermore, it means 75-100 % studies at university level (third level) and other studies, which make the same demands as university studies regarding preparatory education.

4. Parental leave (Clause 2)

Parental leave means that the parents, who each have an individual, non-transferable right to take a three-month leave, may in addition take three more months which they are able to

divide between themselves as they wish (one parent may draw it in its entirety or they may divide the three-month period between them). The duration of parental leave was the same prior to the entry into force of Directive 2010/18. There is no difference in the duration of parental leave in the public sector and the private sector.

Each parent is further entitled to unpaid leave for 13 weeks to care for her/his children. This right is non-transferable.

Parents have a joint right to maternity/paternity leave of up to three months in the event of a stillbirth after 22 weeks of pregnancy. In the event of miscarriage after 18 weeks of pregnancy, the parents have a joint right to maternity/paternity leave of up to two months.

Parental leave is not accompanied by payment from the Maternity/Paternity Leave Fund. The right to parental leave ends when the child reaches the age of eight.

5. Modalities of application (Clause 3)

The right to maternity/paternity leave must be granted upon the birth of a child. However, a parent must be permitted to start her/his maternity/paternity leave up to one month prior to the expected birth date, which must be confirmed by a medical certificate. There is no such thing as pregnancy leave or an obligation for a woman to take leave before giving birth. It is, on the other hand, mandatory for a woman to take maternity leave for at least the first two weeks after the birth of her child.

A parent acquires the right to up to nine months' maternity/paternity leave if the other parent dies during the gestation period of the child and the child is born alive. In the case of the adoption of a child or the taking of a child into permanent foster care, the time reference is based on the date when the child enters the home, provided this is confirmed by the relevant child welfare committee, or other competent bodies.

A parent's rights to maternity/paternity leave are conditional on the fact that the parent herself/himself has custody of the child, or has joint custody with the other parent at the beginning of maternity/paternity leave. A non-custodial parent is entitled to maternity/paternity leave if the consent of the parent exercising custody is obtained, authorising the non-custodial parent to have access to the child during the period of maternity/paternity leave.

When an employee intends to exercise the right to maternity/paternity leave, she/he must notify her/his employer as soon as possible and at least eight weeks prior to the expected birth date of the child. Should a parent wish to change a previously notified starting date of her/his maternity/paternity leave, she/he must notify her/his employer of this three weeks prior to the new intended starting date of her/his maternity/paternity leave.

Notice of the maternity/paternity leave must be given in writing and must state the intended starting date of the leave, its length and its structure. The employer must then sign the notification with the date of receiving it and deliver a copy of it to the employee. The employer may demand, if she or he considers it necessary, confirmation of the fact that the parent has custody of a child, or that the approval of the custodial parent has been obtained.

The right to maternity/paternity leave in connection with the birth of a child expires when the child reaches the age of 36 months (Act No. 70/2009, Article 17).

A parent acquires the right to payment from the Maternity/Paternity Leave Fund after she/he has been active in the domestic labour market for six consecutive months prior to the birth of a child or prior to the date on which a child enters the home in the case of adoption or permanent foster care. The work contribution of a self-employed parent is to be based on the payment of the insurance levy on calculated remuneration for the same period.

When a parent has worked in the domestic labour market for at least the last month of the entitlement period (i.e. the required six months activities in the domestic labour market), the Directorate of Labour must, to the extent necessary, take account of his/her periods of employment as an employee or as a self-employed individual in another Member State of the Agreement on the European Economic Area, the Nordic Agreement on Social Security, the Convention on the Free Trade Association or the Agreement between Iceland, on the one hand, and the Government of Denmark and the home-rule administration of the Faroe Islands,

on the other, during the entitlement acquisition period, providing that the parent's work earned her/his entitlement under the legislation of that state regarding maternity/paternity leave.

The Maternity/Paternity Leave Fund's monthly payment to an employee during maternity/paternity leave must amount to 80 % of her/his average total wages (up to EUR 1 288 (ISK 200 000)) and 75 % of the average total wages exceeding that amount, these being based on a continuous 12-month period ending 6 months prior to the birth of the child or, in the case of an initial adoption or permanent foster care, prior to the date of arrival of the child in the home. 'Wages' under the Act includes all forms of wages and other remuneration. The reference income on which those payments are based must be used as a reference, and in no case can a higher sum be used as a reference. Only the parent's average total wages for the months during the reference period during which she/he was active in the Icelandic labour market are to be used.

The monthly payment from the Maternity/Paternity Leave fund to a worker during maternity/paternity leave can never exceed EUR 1 932 (ISK 300 000).

When an employee has been active in the domestic labour market but not during the reference period specified in the Act, she/he acquires the right to a minimum payment also specified in the law; i.e. the monthly payment during maternity/paternity leave to a parent in a 25-49 % part-time job must never be less than EUR 422 (ISK 65 227) and the monthly payment to a parent holding a 50-100 % job must never be less than EUR 589 (ISK 91.200).

A parent's right to receive payments during maternity/paternity leave is subject to her/his meeting the conditions for the right to maternity/paternity leave, such as her/him having custody of the child. Payments from an employer to a parent on maternity/paternity leave that are higher than the difference between payments from the Maternity/Paternity Leave Fund and the parent's average total wage must be deducted from payments from the Maternity/Paternity Leave Fund.

There are no situations stipulated in the law where the granting of maternity or paternity leave may be postponed for reasons related to the operation of an organisation. Employees may of course negotiate the structure of the leave and nothing prevents the employer from doing the same. The employee may make arrangements with her/his employer for maternity/paternity leave to be divided into a number of periods and/or that it will be taken concurrently with a reduced work time ratio. However, maternity/paternity leave may never be taken in periods of less than two weeks at a time. The employer must make every effort to meet the wishes of the employee regarding the structure of maternity/paternity leave and, if an agreement cannot be reached, the employee always has the right to take her/his maternity/paternity leave in one continuous period from the starting date decided by the employee.

There is a special clause in the Act regarding postponement or other changes in parental leave. If the employer is unable to grant the employee's wishes regarding the structure of parental leave, she/he must, in consultation with the employee, propose a different arrangement within one week from the day of reception of the notification (which the employee must have given in writing six weeks prior to the intended first day of the leave at the latest). The employer must submit her/his proposal in writing, stating the reasons for postponement and its length. Such postponement will only be permitted in the case of extraordinary circumstances in the operations of the company/institution which necessitates it; for example, in the case of seasonal work, or if no qualified substitute can be found, or if the employee in question holds a key position in the top management of the company or institution.

At no time may an employer postpone parental leave by more than six months from the time it was to have started according to the employee's request, without the employee's approval. Parental leave which is to be taken following directly on maternity/paternity leave, or in the case of very serious illness of the child which renders the parent's presence necessary, may never be postponed. Furthermore, postponement is not permitted when the employer has already agreed to the taking of parental leave, or the period of notice has passed without reply being made by the employer.

If the decision of the employer on the postponement of parental leave results in the employee not being able to complete her/his parental leave before her/his child reaches the age of eight, the period during which the taking of parental leave is permitted is to be extended to the day when the child turns nine years of age.

The Act on Payments to Parents of Chronically Ill or Severely Disabled Children, No. 22/2006 (as amended by Acts No. 158/2007, No. 65/2010, No. 162/2010 and No. 126/2011), covers the rights of parents to financial assistance when they are not able to pursue employment or studies due to the special care required by their children who have been diagnosed as suffering from chronic illnesses or severe disabilities.

There are no special arrangements for small firms in the Act No. 95/2000. All firms are provided with some leeway in relation to granting parental leave if it is inconvenient (see previous paragraphs of this section) and Article 27 of the Act No. 95/2000).²⁶⁰

6. Adoption (Clause 4)

Adoptive parents enjoy the same rights to maternity/paternity and parental leave as birth parents. In the case of adoption of a child, or the taking of a child into permanent foster care, the time reference will be based on the date when the child enters the home, provided this is confirmed by the relevant child welfare committee, or other competent bodies. If the parents have to fetch the child from another country, maternity/paternity leave may begin at the start of the journey, providing the relevant authorities or institute have confirmed that permission has been granted for the adoption of a child. The right to maternity/paternity leave in connection with adoption or permanent foster care expires 36 months after the child arrives in the home. There are no additional measures unless the needs fall under the Act on Payments to Parents of Chronically Ill or Severely Disabled Children, No. 22/2006 (see section 5 of this report, above).

7. Employment rights and non-discrimination (Clause 5)

There is employment protection under the Act No. 95/2000. The employment relations between an employee and her/his employer must remain unchanged during maternity/paternity leave and parental leave. The employee is entitled to return to her/his job upon the completion of maternity/paternity leave or parental leave. Should this not be possible, she/he is entitled to a comparable position with the employer according to the contract of employment.

An employer is not permitted, without reasonable cause, to dismiss an employee because she/he has given notice of maternity/paternity leave or parental leave, or during her/his maternity/paternity leave or parental leave. In such a case (i.e., alleging reasonable cause for dismissal), the dismissal must be accompanied by written arguments. The same rule applies to pregnant women, and women who have recently given birth.

There is a provision in the Act on Maternity/Paternity/Parental Leave on the accumulation and protection of rights (Article 14). During maternity/paternity leave, a parent must pay a minimum of 4 % of the maternity/paternity leave payment into a pension fund and the Maternity/Paternity Leave Fund must pay a minimum of 8 %. In addition, the parent has the right to pay into a defined contribution plan. Maternity/paternity leave counts as working time for the purpose of assessing work-related rights; such as the right to holiday or the extension of the holiday period under wage agreements, termination of employment and the right to unemployment benefit.

A person on maternity or paternity leave is not entitled to unemployment benefit under the Unemployment Insurance Act. A parent who receives payments during maternity/paternity leave is not entitled to daily allowance payments or accident injury under

²⁶⁰ Available at: http://eng.velferdarraduneyti.is/media/acrobat-enskar_sidur/Act-on-maternity-paternity-leave-with-subsequent-amendments.pdf.pdf, accessed 26 May 2014.

the Social Insurance Act. Payments from other states concerning the same birth, and for the same period, are deducted from payments out of the Maternity/Paternity Leave Fund.

It is explicitly stipulated in the Maternity/Paternity/Parental Leave Act that when it is applied, attention is to be given to international agreements in the field of social security and social affairs to which Iceland is a party.

8. Return to work (Clause 6)

If, when returning from maternity leave, the safety and health of a woman who has recently given birth to a child, or a woman who is breastfeeding a child, is considered to be in danger according to a special assessment, her employer must make necessary arrangements to ensure the woman's safety by temporarily changing her working conditions and /or working hours. If this is not possible for technical reasons, or other valid reasons, the woman's employer must entrust her with other tasks; if this is not possible the employer must grant her leave of absence for the length of time necessary to protect her safety and health. According to the Act No. 95/2000, changes which are considered necessary in a woman's working conditions and/or working time must not affect her wages so as to reduce them or curtail her other job-related rights.

Apart from the above, the Gender Equality Act No. 10/2008 states that employers must take all necessary measures to enable women and men to reconcile their professional obligations and family responsibilities. Such measures are to be aimed at increasing flexibility in the organisation of work and working hours in such a way as to take account of both workers' family circumstances and the needs of the labour market, including facilitating the return of employees to work following maternity/paternity or parental leave or leave from work due to pressing and unavoidable family circumstances.

9. Time off from work on grounds of force majeure (Clause 7)

Workers are granted time off from work on grounds of force majeure as stated in Section 8 of this report, above. There are also exceptional circumstances provided for in Section V of the Maternity/Paternity/Parental Leave Act where parents have a joint right to the extension of maternity/paternity leave by three months for each child after the first in multiple births (that is, born alive).

Parents who adopt or take into permanent foster care more than one child at the same time, are to have a joint right to extend maternity/paternity leave by three months in respect of each child after the first.

Payments in both of the above cases are subject to the same rules as payments for the first child born alive or the first child adopted or taken into permanent foster care.

Illness of a child or its mother is also taken into consideration in the Maternity/Paternity/Parental Leave Act. Should a child need to remain in hospital for more than seven days directly following the birth, the parent's joint right to maternity/paternity leave can be extended by the number of days the child has to stay in hospital, prior to its homecoming, by up to four months.

The parent's joint right to maternity/paternity leave can also be extended by up to three months in the case of serious illness of the child, requiring more intensive parental attention and care.

The mother's maternity leave can be extended by up to two months due to a serious illness suffered by her in connection with the birth.

10. Final provisions (Clause 8)

The expert has no further comments to make.

11. Sanctions (Article 2)

Should an employer violate any provision of the Maternity/Paternity/Parental Leave Act, she/he will be liable under the general rules of Icelandic tort law.

Violations of the Act are punishable by fines, which are to be paid to the State Treasury.

12. Case law

The few cases that have come before the Supreme Court on the basis of the Maternity/Paternity/Parental Leave Act concern unlawful dismissal. An employee is not to be dismissed, without reasonable cause, due to the fact that she/he has given notice of intended maternity/paternity leave or parental leave, or during her/his leave, and in such a case (i.e. alleged lawful dismissal), the dismissal must be accompanied by written argument. The same rule applies to pregnant women, and women who have recently given birth (Article 30 of the Act).

The Supreme Court in 2011 held that the dismissal of a woman who had given notice of intended maternity leave was not unlawful. The company concluded her employment contract but not in relation to the notice. The parties to the case disagreed on the validity of the reasons behind the dismissal. The woman had no special training in the sphere of her work, but it had been announced to all the staff prior to her notice that the intention was to hire someone with special training. The company was acquitted.²⁶¹

In 2010 the Supreme Court held that the refusal by a bank's solvency committee of a priority ranking claim for wages in the service of the bankrupt bank,²⁶² where a district court had acknowledged that the claimant's dismissal was contrary to Article 30 of the Maternity/Paternity Leave Act, was acceptable in light of the huge losses and the financial crash in 2008 and the necessary reorganisation of the business. The claimant's priority ranking claim was hence rejected.²⁶³

Most of the recent cases that have been brought before the Maternity/Paternity/Parental Leave Complaints Board concern complaints regarding decisions by the Directorate of Labour demanding repayments in cases where it considers parents to have received higher payments from the Maternity/Paternity Leave Fund than they should have received according to the tax levied by the tax authorities or for other reasons and then they have to pay back the excess with a 15 % supplement.

13. Practice and other relevant issues

Statistics from the Maternity/Paternity Leave Fund reveal that fathers are taking less advantage of their right to paternal leave and have used less of the time with their children in recent years. Almost 25 % of the fathers of children born in 2009 decided not to use their right to take parental leave during the 36 months they have until the right expires. Subsequent temporary statistics show that, in the years 2010 to 2012, fathers made less use of this right than in the years preceding the financial collapse in Iceland in 2008. Still fewer men are using their share of the joint right to parental leave (three months) and their reluctance is explained by the fact that the maximum payments from the Maternity/Paternity Leave Fund have been incrementally reduced from the peak they reached just prior to the crash.²⁶⁴

²⁶¹ Supreme Court No. 257/2011. Available at: <http://haestirettur.is/domar?nr=7698&leit=t>, accessed 18 July 2014.

²⁶² Article 112, Act on Bankruptcy No. 21/199, available at: <http://eng.innanrikisraduneyti.is/laws-and-regulations/english/nr/6570>, accessed 27 May 2014.

²⁶³ Supreme Court No. 11/2010, available at: <http://haestirettur.is/domar?nr=6417&leit=t>, accessed 27 May 2014.

²⁶⁴ See further: <http://www.visir.is/fedur-taka-sidur-faedingarorlof/article/2013710239929>, accessed 17 July 2014.

IRELAND – Frances Meenan

1. Context

There are a number of different pieces of legislation²⁶⁵ which facilitate the reconciliation of work, private and family life. The Maternity Protection Acts 1994 and 2004 provide for paid²⁶⁶ maternity leave of 26 weeks and additional (unpaid) maternity leave of 18 weeks along with certain extensions of leave in the event of the infant being hospitalised or the transfer of any balance of leave untaken to the father on the death of the mother. There is also provision for paid time-off for medical appointments for the pregnant employee and for pre-natal classes (with the father being entitled to paid time-off for one set of classes). The Adoptive Leave Acts 1995 and 2005 mirror the maternity legislation²⁶⁷ in the event of the adoption of a child and with certain additional flexibility as to the taking of time-off in respect of inter-country adoptions. The Parental Leave Acts 1998²⁶⁸ and 2006²⁶⁹ provide for 18 weeks of unpaid parental leave for the parents of natural or adoptive children. Parental leave is in addition to maternity or adoptive leave. The Minister for Justice and Equality stated that he was going to consolidate the maternity, adoptive and parental leave legislation into one piece of legislation, the Family Leave Act. This Act also provides for certain arrangements for employees in the case of *force majeure*. The Carers' Leave Act 2001 provides that an employee may have up to 104 weeks' paid leave from their employment to look after a relative who needs care.

The following developments should be noted, however. As frequently happens, there is confusion of language in this area of law, with a lack of precision in the use of descriptions of maternity, paternity and parental leave. The Government has agreed to accept, in principle, a Private Members' Bill (draft legislation) on parental leave.²⁷⁰ The Parental Leave Bill 2013 would allow the father of a new-born child to share in the maternity leave of women currently given under Irish law.²⁷¹ A woman would be allowed to transfer a portion of her maternity leave to the child's father. The Minister for State for Equality has stated that an impact assessment of the proposal will be carried out and fresh draft legislation will be published. The Maternity Protection Acts 1994 and 2004 (as amended) provide for 26 weeks of

²⁶⁵ All Irish legislation is available at: <http://www.irishstatutebook.ie/home.html>, accessed 5 April 2014. A consolidated version of the Parental Leave Acts 1998-2006 is available at http://www.lawreform.ie/fileupload/RevisedActs/WithAnnotations/EN_ACT_1998_0030.PDF. Accessed 25 July 2014. This is an administrative consolidation of the legislation, so the usual disclaimers apply.

²⁶⁶ There is a state benefit of EUR 230 gross per week.

²⁶⁷ 24 weeks, i.e. two weeks less than maternity leave and 16 weeks (unpaid) additional adoptive leave.

²⁶⁸ Research was commissioned by the Working Group on the Review of the Parental Leave Act 1998 (Dublin: Stationery Office, 2002) which was published in April 2002 and showed that almost seven per cent of employees were eligible to take parental leave in 2001. Twenty per cent of eligible employees were estimated to have taken parental leave with the level of uptake being higher in the public sector and the majority of those taking parental leave were women, at 84 per cent. The Report recommended that the maximum age of the child where a parent could take parental leave should be increased to eight, that parental leave should be permitted to be taken in some format other than as a single continuous block of leave and that the duration of parental leave be increased by four weeks. The agreed recommendations were implemented in the Parental Leave (Amendment) Act 2006.

²⁶⁹ The relevant legislation is the Parental Leave Act 1998, the Parental Leave (Amendment) Act 2006, the Parental Leave (Notice of *Force Majeure* Leave) Regulations (S.I. No. 454 of 1998), the Parental Leave (Disputes and Appeals) Regulations (S.I. No. 6 of 1999), the Parental Leave (Maximum Compensation) Regulations (S.I. No. 34 of 1999), the Circuit Court Rules (S.I. No. 510 of 2001), and the European Communities (Parental Leave) Regulations (S.I. No. 231 of 2000) and the European Union (Parental Leave) Regulations 2013 (S.I. No. 81 of 2013).

²⁷⁰ Speech of the Minister for State for Equality in the Seanad in response to the Opposition's Private Members' Bill on the sharing of maternity leave between parents and thus allowing for paternity leave. The speech is available at: <http://www.justice.ie/en/JELR/Pages/SP13000291>, accessed 3 March 2014. The speech of the Minister at second stage (10 July 2013) highlighted some of the difficulties in the draft legislation. The speech is available at: <http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/seanad2013071000034?opendocument>, accessed 16 March 2014.

²⁷¹ Available at: <http://www.oireachtas.ie/viewdoc.asp?fn=/documents/bills28/bills/2013/7813/document1.htm>, accessed 3 March 2014.

maternity leave for the mothers of a child and 24 weeks for adoptive mothers. Only the mother is entitled to this leave (unless on the death of the mother the leave transfers to the father). The Minister for Equality on the second reading of the Bill stated that as this draft legislation refers to maternity leave, it should have used the more accurate title ‘Maternity Protection (Amendment) Bill’ or similar wording. The Minister also stated that the Bill proposed to increase the maternity leave to 28 weeks; the mother would have 14 weeks and then the balance period of 14 weeks with the related social welfare benefits could be assigned to the father. The Minister also noted that a government-sponsored Family Leave Bill is awaited which would consolidate the maternity, adoptive and parental leave legislation.

2. Implementation of Directive 2010/18

Directive 2010/18/EU was transposed into Irish law by the European Union (Parental Leave) Regulations 2013 (‘the 2013 Regulations’) which entered into effect on 8 March 2013. There is no publication of tables to illustrate the correlation between the Directive and transposition measures.

3. Purpose and scope (Clause 1)

The legislation is applicable to all employees and to persons holding office under or in the service of the State including a member of *An Garda Síochána* (police force), the Defence Forces, the civil service, a local or harbour authority, the Health Service Executive or a vocational education committee.²⁷² It applies to persons in both the public and private sectors regardless of the nature of their employment, e.g. part-time, fixed-term or if they are agency workers.²⁷³ The employee must have one year of continuous service before they are entitled to parental leave. However, if the employee’s child is very near the age threshold and where the employee has been working for three months for the employer concerned, there is provision for pro-rata parental leave: one week of leave for every month of employment completed. If an employee changes employment and if the child is still below the age threshold and the parental leave allowance has not been fully used then the employee may use up the balance of the allowance of leave when one year’s employment has been completed and the child is still below the qualifying age.

There is provision for the taking of parental leave in the event that a child is sick or disabled up to the age of 16.

4. Parental leave (Clause 2)

The Parental Leave Regulations 2013 increased parental leave from 14 to 18 working weeks for all natural or adopting (where an adoption order is awaited)²⁷⁴ or adoptive parents (where

²⁷² Section 2 of the Parental Leave Act 1998.

²⁷³ ‘Contract of employment’ is defined as ‘(a) a contract of service or apprenticeship, or (b) any other contract whereby an individual agrees with another person, who is carrying on the business of an employment agency within in the meaning of the Employment Agency Act 1971, and is acting in the course of that business, to do or perform personally any work or service for a third person (whether or not the third person is a party to the contract), whether the contract is express or implied and if express, whether it is oral or in writing’. The definition of ‘employee’ is ‘a person of any age who has entered into or works under (or where the employment has ceased, entered into or worked under) a contract of employment and includes a part-time employee and a fixed-term employee, and references in relation to an employee shall be construed as references to an employee employed by that employer; ...’. The definition of ‘employer in relation to an employee (a) means a person with whom the employee has entered into or for whom the employee works under (or, where the employment has ceased, entered into or worked under) a contract of employment, subject to the qualification that the person who under a contract of employment referred to in paragraph (b) of the definition of “contract of employment” is liable to pay the remuneration of the individual concerned in respect of the work or service concerned shall be deemed to be the individual’s employer, and ...’. Section 2 of the Act as amended by the European Union (Parental Leave) Regulations 2013 (S.I. No. 81 of 2013).

²⁷⁴ An ‘adopting parent’ means ‘an adopting father, adopting mother or sole male adopter’ within the meaning of Section 2 of the Adoptive Leave Act 1995. Section 2(1) of the Adoptive Leave Act 1995 provides that ‘an

an adoption order is in place)²⁷⁵ (or a parent *in loco parentis*) in all sectors of employment. Parental leave shall end not later than the child's eighth birthday. If a child has a disability or a long-term illness, the upper age limit is 16 or the cessation of the child's disability or illness (whichever occurs first). The right of parental leave is individual for each parent. There is provision for the transfer of up to 14 weeks' parental leave entitlements from one parent to the other parent where both are employed by the same employer and the employer consents to the transfer of leave. Therefore, the 'donor' parent retains the right to four weeks' parental leave. The legislation is silent in respect of parental leave where a child was born as a result of a surrogacy arrangement. Parental leave is unpaid.²⁷⁶ An employer may delay the taking of parental for up to six months for business reasons but this may only be done where the confirmation document to take leave has not been signed. If an employee becomes ill during parental leave and is not able to look after the child then the leave may be postponed if the leave has not commenced, and it may be suspended until such time as the employee is no longer sick.²⁷⁷

5. Modalities of application (Clause 3)

Parental leave may consist of a continuous period of 18 weeks or two separate periods of not less than six weeks. By agreement with the employer, an employee may take leave in shorter blocks or by reducing hours or a combination of both to the limit of 18 weeks but there must be a minimum of a ten week gap between the two periods of leave.²⁷⁸ If the employer and the employee cannot agree the hours concerned then the calculation is 18 times the average number of hours per week during which the employee worked in each of the period of 18 weeks ending before the commencement of such leave. In determining the period of 18 weeks, holidays including public holidays, sick leave, maternity leave, adoptive leave or *force majeure* leave shall be excluded (and a corresponding number of days shall be included). If an employee is entitled to parental leave in respect of more than one child (and the children are not born of a multiple birth), the period of parental leave in any period of 12 months shall not exceed 18 weeks or periods comprising 18 weeks.

An employee who wishes to take parental leave must give written notice of such proposal as soon as reasonably practicable but not later than six weeks before the commencement of such leave. The notice must be signed by the employee and state the date of commencement of the leave, its duration and the manner in which it is proposed to be taken.²⁷⁹ The employer should then give a signed confirmation document which shall state the date of commencement of the leave, its duration and the manner in which it is to be taken at least four weeks prior to the commencement of leave.²⁸⁰ The parties can postpone, vary (by agreement) or curtail the leave (the balance of which may be taken at a future date by agreement). In a situation where the employee has given notice of the taking of parental leave and there the employer believes that the taking of parental leave would have a substantial adverse effect on the running of the business, profession or occupation, the employer may at least four weeks before the

adopting father' means 'a male employee in whose care a child has been placed with a view to the making of an adoption order or to the effecting of a foreign adoption or following on any such adoption where the adoptive mother has died'; 'An adopting mother' means 'a woman, including an employed adopting mother, in whose care a child (of whom she is not the natural mother) has been placed or is to be placed with a view to the making of an adoption order, or the effecting of a foreign adoption or following any such adoption' and a 'sole male adopter' means 'a male employee who is not an adopting father within the meaning of the Act and in whose sole care a child has been placed or is to be placed with a view to the making of an adoption order, or to the effecting of a foreign adoption or following any such adoption'.

²⁷⁵ An 'adoptive parent' in relation to a child means 'a person in whose favour an adoption order in respect of the child has been made and is in force'.

²⁷⁶ Employees who take parental leave are entitled to a Pay Related Social Insurance credit when on parental leave so that their cover for social security is kept up to date (see No. 7 below).

²⁷⁷ Section 10 of the Parental Leave Act 1998.

²⁷⁸ In *O'Neill v Dunnes Stores* [2000] ELR 306, the Employment Appeals Tribunal determined that if an employer does not agree to the taking of parental leave in blocks then the leave must be taken in full.

²⁷⁹ An employee may revoke the notice.

²⁸⁰ Section 9 of the Parental Leave Act 1998.

commencement of leave postpone the commencement of the leave for no longer than six months.²⁸¹ However, the employer must consult with the employee. This postponement will not apply when the confirmation document has been signed by the employer and employee. It is considered that the periods of time involved are reasonable and in any event the leave cannot be postponed by more than six months.²⁸² If the parent is ill and cannot look after the child, then if the leave has not commenced, it can be postponed or if it has been commenced then the leave can be suspended until the employee is no longer ill.

As stated above the qualifying period for parental leave is one year's service. There are provisions reducing the one year threshold in certain circumstances (see no. 2 of this report, above). In the case, where there are two or more continuous fixed-term contracts, then such continuous period of employment shall be used to compute the one year qualifying period or the short qualifying period (as set out in no. 2 of this report, above).

There are no special arrangements for small firms.

As set out under no. 4 of this report, above, there are special arrangements where there is a sick or disabled child.

6. Adoption (Clause 4)

Employees who are adoptive or adopting parents are entitled to parental leave. An adopting parent means an adopting father, adopting mother or sole male adopter. An adoptive parent is a parent in whose favour an adoption order in respect of the child has been made and is in force. In the case of a child who is the subject of an adoption order and who has on or before the date of the making of the order attained the age of six but not the age of eight then the leave must be taken not later than two years from the date of the order.²⁸³

7. Employment rights and non-discrimination (Clause 5)

An employer shall not penalise an employee for proposing to exercise or having exercised his or her entitlement to parental or family leave or to make a request for a change in hours or patterns of work. Penalisation of an employee includes dismissal, unfair treatment of the employee (including selection for redundancy) and an unfavourable change in the conditions of employment of the employee. If penalisation constitutes a dismissal, the employee may bring proceedings under the Unfair Dismissals Acts 1977-2007, which provide redress of reinstatement, re-engagement or compensation up to a maximum of two years' remuneration.²⁸⁴

Any other form of dispute or difference relating to the entitlements under the Act may be referred to a rights commissioner under the parental leave legislation. The redress may be a grant of parental leave of such length to be taken at such time or times or in such manner as may be specified and/or an award of damages of up to 20 weeks' remuneration²⁸⁵; such recommendation may be appealed to the Employment Appeals Tribunal and then to the High Court on a point of law.

During the period of parental leave the employee shall be regarded as still working in his or her employment and none of his or her rights will be affected.²⁸⁶ However, there is no

²⁸¹ Such refusal may only occur once, in respect of each child. However, if the reason for refusal is the cyclical nature of the employer's business, there may be two postponements.

²⁸² See no. 4 of this report, above.

²⁸³ Section 6 of the Parental Leave Act as amended by the Parental Leave (Amendment) Act 2006 and the 2013 Regulations.

²⁸⁴ Section 16 of the Parental Leave Act 1998.

²⁸⁵ 'Remuneration' is not defined in the Parental Leave Acts however, for the purposes of compensation it is defined in the Parental Leave (Maximum Compensation) Regulations 1999 (S.I. No. 34 of 1999). The purpose of these Regulations is to ensure that certain overtime earnings, commission or where the employee is working on a piece rate, for example that such sums are included in the calculation of compensation. In addition, see 11 below.

²⁸⁶ Section 14(1) of the Parental Leave Act 1998.

entitlement to payment²⁸⁷ from the employer, but there may be a contractual arrangement for payment or partial payment. The employee has no entitlement to any State payment during the period of parental leave, however, employment contributions shall be credited to an insured person in respect of each contribution week during which time, the employee avails of parental leave or *force majeure* leave.²⁸⁸

During the period of parental leave, the employee retains the right to public holidays and any public holidays that fall in the period of leave are added at the end of the parental leave. Annual leave which accrues during parental leave shall be granted in accordance with the Organisation of Working Time Act 1997, which means that the time at which annual leave is granted to the employee is decided by the employer having regard to the requirements of the employer's business and subject to the employer taking into account the need for the employee to reconcile work and family responsibilities and rest and recreation.²⁸⁹

8. Return to work (Clause 6)

On the expiration of parental leave, the employee is entitled to return to work with his or her employer in the job which they held immediately before the commencement of the leave. The employee must work under the same contract of employment on terms which are not less favourable and which contract incorporates any improvement to the terms or conditions of employment which the employee would be entitled to if they had not been absent from work. In a situation where the job carried out by the employee immediately before the period of parental leave was not the employee's normal or usual job, then the employee will be entitled to return to work either in his or her usual job or in that job as soon as reasonably practicable without contravention of any statutory provision. In the event of a transfer of business during the period of parental leave, the employee will be entitled to return to work with the new owner on the same terms as if no transfer of business had taken place. In the event that there is an interruption or a cessation of work (e.g. lack of work or if a fire had occurred) in an employee's place of employment, then the employee shall return to work after such interruption or cessation as soon as possible thereafter.²⁹⁰

²⁸⁷ The employee has no right to 'remuneration or superannuation benefits or any obligation to pay contributions in or in respect of the employment'. The word 'remuneration' is not defined in the Parental Leave Acts (nor is the word defined in the Maternity Protection Acts 1994 and 2004 and the Adoptive Leave Acts 1995 and 2005) but in a case under the now repealed maternity legislation, the word 'remuneration' was considered. The Employment Appeals Tribunal in *McGivern v Irish National Insurance Company Ltd.* (P5/1982) considered that the statement in *S & U Stores v Lee* [1969] 2 All ER 417 at 419 was 'a generally satisfactory definition' in that '[R]emuneration is not mere payment for work done but is what the doer expects to get as the result of the work he does insofar as what he expects to get is quantified in terms of money'. In *McGivern*, it was decided that the provision of a company car was part of the claimant's remuneration and thus, the employer was not obliged to allow the use of the car during maternity leave.

²⁸⁸ European Communities (Social Welfare) (Consolidated Contributions and Insurability) (Amendment) (Parental Leave Credited Contributions) Regulations (S.I. No. 685/2005). *Inter alia* an employee may get credits for periods on maternity or adoptive benefit (as employees only). In effect, an employee has no income during parental leave. There is limited eligibility for health care cover. A person may be category 1 (medical card holders). Entitlement to such cards provides most medical and related services and is subject to a person's income and the size of their family; the computation is a complicated process and is available at: http://www.citizensinformation.ie/en/health/entitlement_to_health_services/medical_card_means_test_under_70s.html, accessed 25 July 2014. Category 2 then provides for limited eligibility. It allows for free public hospital services but there is a payment for in-patient and out-patient services. Many people have private health insurance. If a person is in employment and their employer pays their health insurance then this is part of their remuneration and hence they have no entitlement to such benefit during the period of parental leave. (In practical terms arrangements are usually put in place to cover such health insurance). In addition, the employee would have no entitlement to *premia* being paid in respect of their pension, permanent health insurance, and life assurance. (However, again arrangements are put in place for such payments). Generally speaking, if an employee takes the 18 weeks of parental leave the answer is clear, but if for example the employee works part-time for the equivalent period of parental leave, then the employee could argue an entitlement to the said *premia* being paid as it would logically be very hard to pay a proportion of the *premia*.

²⁸⁹ Section 7 of the Parental Leave Act 1998.

²⁹⁰ Section 15 of the Parental Leave Act 1998. There are similar provisions in the Maternity Protection Act 1994 and the Adoptive Leave Act 1995.

An employee returning from parental leave may request changes to his or her working hours and/or patterns of work for a set period of time following his or her return to work. The employee must give at least six weeks' notice in writing of the details of such proposed change of hours and/or patterns of work. The employer shall consider the request within four weeks having regard to the needs of the employment concerned and shall inform the employee in writing that the request has been refused or the employer shall state that there will be an agreement setting out the changes in the employees' working hours and/or patterns of work with the date of commencement of the said period. This Section of the Act was inserted by Regulation 6 of the Regulations of 2013.²⁹¹ The explanatory memorandum to the Regulations states that the employer must consider the request but that the employer is 'not required to grant it'. In the view of the expert, whilst it is not stated, the employer should give full consideration to the reason for the refusal, e.g. genuine business reasons. If there is not a reasonable and considered response, the employer may be exposed to a viable discrimination claim on gender or family status grounds.

There are no provisions for contact or communication between employer and employee during leave.

Where an employee is entitled to return to work but where it is not reasonably practicable for the employer to permit the employee to so return, the employee is entitled to be offered suitable alternative work under a new contract of employment.²⁹² Such work must be suitable for the employee and the terms and conditions of employment cannot be less favourable than the employee's contract of employment immediately before the leave. The employee would also be entitled to any improvements to the terms and conditions of employment. The employee retains continuity of service with his or her previous contract of employment.²⁹³

9. Time off from work on grounds of force majeure (Clause 7)

An employee is entitled to *force majeure* leave²⁹⁴ where for urgent family reasons owing to injury or illness, the immediate presence of the employee is indispensable. The question of urgency and indispensability should not be judged with hindsight. In *Carey v Penn Racquet Sports Ltd.*²⁹⁵ the plaintiff employee was a single mother with an eight-year-old child who took a day's leave because the child woke up with a rash on her legs. The employer refused to grant *force majeure* leave because following an examination of the child by a medical doctor, the child was diagnosed with having a rash which was not serious. Carroll J. in the High Court stated 'The matter should have been looked at from the plaintiff's point of view at the time the decision was made not to go to work. Also, the plaintiff could not be assumed to have medical knowledge which she did not possess'. The High Court in another case also stated that on the judgment of the facts the relatives are a child or an adoptive child, spouse or the person with whom the employee is living with as husband or wife, a person with whom the employee is in *loco parentis*, a brother or sister of the employee, a parent or grandparent of the employee or a person who resides with the employee in a relationship of domestic dependency (where in the event of injury or illness, one reasonably relies on the other to make arrangements for the provision of care and the sexual orientation of the person concerned is immaterial). *Force majeure* leave shall not exceed three working days in any period of 12 consecutive months or five working days in any period of 36 consecutive months. Arising

²⁹¹ Section 15A of the Parental Leave Act 1998 as inserted by Regulation 6 of the European Communities (Parental Leave) Regulations 2013.

²⁹² E.g. in *O'Kane v Dunnes Stores* [2005] ELR 337, the claimant sought to return to work following parental leave. The employer sought to require her to work in a different store and in a different position. The claimant thought that this was demotion; she resigned and claimed constructive dismissal. She was awarded EUR 7 500 compensation.

²⁹³ Section 15 of the Parental Leave Act 1998.

²⁹⁴ Section 13 of the Parental Leave Act 1998.

²⁹⁵ [2001] 3 IR 32. Likewise, in *McGaley v Liebherr Container Cranes Ltd.* [2001] 3 IR 563, McCracken J. stated that the facts in any particular case are as they existed at the time of the circumstances of the case and that the facts of the case cannot be looked at in hindsight.

from its ‘immediate’ and ‘urgent’ nature, such leave has to be applied retrospectively.²⁹⁶ The 36-month period is calculated ‘by starting on the day for which *force majeure* leave is claimed and counting the number of days taken as *force majeure* leave in the period of thirty-six consecutive months immediately preceding the day in question.’²⁹⁷

An employee who takes *force majeure* leave is required to notify his or her employer as soon as reasonably practicable and within four weeks to supply to the employer a medical certificate containing details of the family member’s injury or illness.²⁹⁸

10. Final provisions (Clause 8)

The minimum requirements of the Directive have been met in relation to periods of leave.

11. Sanctions (Article 2)

The sanctions are dissuasive and proportionate in the event that the employee is dismissed arising from penalisation for seeking leave or is denied their employment on return from leave. The employee can bring a claim under the Unfair Dismissals Acts 1977-2007 where the successful claimant can be awarded reinstatement, re-engagement or up to two years’ remuneration; if the employee elected to bring a discrimination claim and if successful they could obtain the same redress or alternatively, they could bring a claim on the gender ground to the Circuit Court and be entitled to the same re-employment but to an order for unlimited compensation going back six years prior to the date of the claim. However, in this writer’s opinion, the compensation is not effective, dissuasive and proportionate in the event that there is a change in an employee’s terms and conditions of employment in that they can only obtain 20 weeks’ compensation under the parental leave legislation. In such circumstances, the employee would have to bring a claim under the Employment Equality Acts 1998-2011 on the family status ground. If there was a successful claim under the Employment Equality Acts before the Equality Tribunal, the employee would be entitled to up to two years’ remuneration and if successful on the gender ground before the Circuit Court, there can be compensation going back six years prior to the date of claim with no upper limit.

12. Case law

There has been little litigation arising from parental leave except for entitlement to *force majeure* leave (which is referred to above). There is no case law that provides for more favourable entitlements than as provided for in the Directive.

13. Practice and other relevant issues

The difficulty with parental leave is that it is unpaid and thus, many employees may not be able to afford to take 18 weeks from work without pay. However, if there is agreement between employer and employee, there can be an arrangement where effectively the employee works part-time to a value of up to 18 working weeks which is beneficial to the employee.

An employee returning to work following parental leave may be in some difficulty in returning to their original job. This is more likely where an employee takes maternity leave (26 weeks), then additional maternity leave (18 weeks), parental leave (18 weeks) and their holidays entitlements (say four weeks) together which would total about 15 months absence from work. One must argue, however, that such absence may be problematic for an employer as well in some sectors, e.g. the fast-moving IT sector. It can happen that an employee is offered alternative employment but the employee does not deem it to be suitable alternative

²⁹⁶ *McMonagle v O’Shea* [2010] IEHC 180.

²⁹⁷ *O’Hanlon v Bus Atha Cliath* PL1/2006 (Employment Appeals Tribunal).

²⁹⁸ Parental Leave (Notice of *Force Majeure* Leave) Regulations 1998 (S.I. No. 454 of 1998).

employment; in such circumstances they may resign their employment and bring a constructive dismissal case under the Unfair Dismissals Acts. Such cases can be difficult for an employee to win as the burden of proof is on the claimant to show that they were left with no alternative but to resign their employment.

As under (1) above, draft consolidated legislation is awaited and it may provide for a more equal division of family responsibilities, e.g. in respect of maternity leave. However, given the complexity of all family leave legislation, it is envisaged that the preparation of such draft legislation will take some time.

ITALY – *Simonetta Renga*

1. Context

Italian legislation, consolidated by Decree No. 151/2001, provides for a compulsory maternity leave of five months; this leave is granted to the father in special cases. According to Article 4 of Act no. 92/2012 (temporarily, from 2012 to 2015), fathers are also entitled to three days of paternity leave in the first five months following the child's birth, of which two days can be an alternative for the mother and one day is compulsory for the father, meaning that the mother can come back to work and the father stay on leave for two days: it is up to them to choose. Decree no. 151/2001 also provides for: parental leave to be taken until the child reaches the age of 8; leave for the illness of a child; leave for workers taking care of disabled persons; time off in connection with childcare; and time off for the care of disabled relatives. Furthermore, Article 4 of Act no. 53/2000 provides for: leave for death or serious illness; leave for serious family reasons. The most important care leaves are paid by social security allowances (maternity, paternity and parental leave, disabled leave, time off for the care of children and disabled relatives) and do not require the fulfilment of contribution or length of service conditions. The institution of notional contributions (i.e. paid from public funds) prevents workers from suffering prejudice in the future enjoyment of pension benefits due to absence from work for care duties. All these provisions are also granted in the case of national and international adoption and official custody of a child. The Italian regulations fulfil the EU requirements, as the general discipline of leaves has been adapted to the particular necessities of adoption and official custody: for example, for adoption, maternity leave must be taken during the first five months after the child comes to live in the family and it lasts five months (with no limits to the age of the child); in case of international adoption or official custody, maternity leave can also be taken during the stay in the territory of the country involved in the adoption or fostering arrangement.

2. Implementation of Directive 2010/18/EU

The Directive was implemented by the 2013 Budget Act: Act no. 228/2012 (Article 1 Paragraph 339). The terms of the implementation were very limited however. This because Articles 32 to 38 of Decree no. 151/2001 already provided for a scheme on parental leave that was very comprehensive in comparison with EU standards. The Italian system indeed sometimes even exceeds EU protection. In particular, the 2013 Act, which amended Article 32 of Decree no. 151/2001, added to the existing scheme the following. In the first place, it stated that the modality of application of the parental leave on an hourly basis or as a time-credit system is stipulated by collective agreements. Additionally, it provided that special modalities of application of parental leave, including the possibility to postpone the granting of the leave, are stipulated by collective agreements for the sectors of security/defence and firemen, in order to take into account the specific necessities of organisation of these services. Then the 2013 Act stated the obligation for the worker to specify the beginning and the end of the period of leave. Finally, it provided that during the period of leave, the employer and the employee may arrange, when necessary, any appropriate reintegration measure, taking into account collective agreements.

The discipline of Act 228/2012 did not mention its implementing nature and no tables were drawn up to illustrate the correlation between the Directive and transposition measures. Indeed, the implementing nature of Paragraph 339 of Article 1 of Act 228/2012 can be assumed by a previous attempt at fulfilling Directive 2010/18/EU, which mentioned its objective and the content of which was identical to that of Paragraph 339. This Government Decree (no. 216/2011), however, was never converted into law and has thus lapsed.

3. Purpose and scope (Clause 1)

Decree no. 151/2001 on the Protection of Motherhood and Fatherhood applies to all the employees of the private and the public sector, including apprentices; employee partners of cooperative companies (i.e. companies formed by workers who work inside the company but who are at the same time associated to the company); contracts of employment or employment relationships related to part-time workers; fixed-term contract workers or persons with a contract of employment or employment relationship with a temporary agency.

4. Parental leave (Clause 2)

Parental leave lasts a total of ten months for both parents and may be taken by either the father or the mother during the first eight years of the child's life. In particular, the following persons have this right: the mother, when the period of compulsory maternity leave ends, for a total of six months, all at once or divided into smaller fractions (without limits); the father, when his child is born, for a continuous period or various periods of not more than six months in total, which can be extended to seven when the father decides to take the leave for a continuous period or various periods of not less than three months; single parents, for a continuous period or various periods of not more than ten months. If a working father decides to take not less than three months off from work, the total time allowed to both parents is eleven months for both parents. This law is evidently an incentive for working fathers to take leave.

Parental leave is an individual right for each of the parents. Parental leave is also granted on the same conditions for adoption and official custody of a child; in this situation, the leave can be taken within eight years from the day that the child enters the family, provided that he/she is a minor. There are no differences in the duration of parental leave in the public and the private sector. The duration of parental leave has not been touched by the implementation of Directive 2010/18/EU. As the total period of parental leave is 10 months (11 when the father takes at least three months of leave), and the total for each parent is 6 months (7 for fathers that take at least three months of leave), the result is that two months of leave can be transferred from one parent to the other; in this case the 'donor parent' retains the right to 4 months of leave for his/her own use. This means that if one of the two parents takes six months (normally this is the maximum individual length), the other can only take 4 months because the maximum length of parental leave is 10 months, so two months are necessarily transferred from one parent to the other. The same goes if the father takes 7 months (with a one-month bonus for taking more than three months): the mother can take 4 months, so two months are transferred from her to the father. There are no provisions on surrogacy.

5. Modalities of application (Clause 3)

Parental leave can be taken for one continuous period or various periods. Following the implementation of Directive 2010/18/EU, Act no. 228/2012 provided that the modalities of application of the parental leave on an hourly basis or as a time-credit system are stipulated by collective agreements. It also provided that special modalities of application of parental leave, including the possibility to postpone the granting of the leave, are stipulated by collective agreements for the sectors of security/defence and firemen, in order to take into account the specific necessities of organisation of these services.

Notice must be given by the employee to the employer when exercising the right to parental leave. This notice period is stipulated by collective agreements and cannot be less than 15 days. The worker, as a consequence of the implementation of Directive 2010/18/EU, has to specify the beginning and the end of the leave period.

There is no work and/or length of service requirement in order to benefit from parental leave, nor are there special arrangements for small firms.

Parents of severely handicapped children may take up to three years, in total, off from work as parental leave, during the first eight years of the child's life, provided the child is not hospitalised in a specialised institute (unless the presence of parents is required by doctors). This extension of parental leave, which can be taken for a continuous period or various periods, is an alternative to legally sanctioned rest periods for parents of handicapped children (amounting to two hours paid rest each day, or three days paid rest each month). The extension begins with the end of the maximum period of parental leave. Extension is an individual right for each of the parents and is also granted on the same conditions as those that apply to adoption and official custody of the disabled child, in both the public and the private sector.

Moreover, working mothers or fathers of children who have been severely handicapped for at least five years may also take a continuous period or various periods of up to two years off from work. The benefits during this period are the same as the last-earned salary, up to a yearly ceiling. Notional contributions apply. The above-described parental leave also applies when a severely handicapped child is adopted or in official custody (Article 42, Paragraph 5 d.lg.vo no. 151/2001).

6. Adoption (Clause 4)

Parental leave is granted on the same conditions for national and international adoption and official custody of the child, at any age of the child, within 8 years from the day that the child enters the family, provided that he/she is a minor. However, there are no additional measures to address the specific needs of adoptive parents.

7. Employment rights and non-discrimination (Clause 5)

According to Article 25 of the Code of Equal Opportunities (Decree no. 198/2006) and to Article 3 of Decree no. 151/2001, less favourable treatment related to pregnancy, motherhood or fatherhood, also adoptive, as well as to the respective rights, are regarded as direct gender discrimination. Dismissal on the grounds of an application for, or the taking of, parental leave is null and void and the special remedy of reinstatement provided by Article 18 of the Worker's Statute is enforceable (Article 54 Decree no. 151/2001).

At the end of the parental leave, workers have the right to return to the same workplace or, if not possible, to a workplace in the same municipality as the previous one; to the same job or, if that is not possible, to an equivalent job (Article 56 Decree no. 151/2001).

To all effects and purposes, periods of leave count towards length of service; but they do not count as regards paid or unpaid holidays and Christmas bonuses.

During the periods of parental leave, for the first three years of the child's life (or during the first three years from the day that the child enters the family, in case of adoption or official custody), parents are entitled to a benefit equal to 30 % of their normal wages for a total of six months for both parents. So out of the 10 (or 11) months only 6 are paid. Notional contributions are taken into account for pension rights and amounts. This also applies to the period of extension of leave for parents of severely handicapped children. For any leave taken after the child reaches the age of three, or over the maximum period of six months, benefit is only paid if the claimant's earnings are less than 2.5 times the minimum pension paid under the general compulsory insurance system. In this case, the notional contribution calculations for pension purposes are reduced, but the amount can be fully supplemented through redemption of contributions (Articles 34 and 35 of Decree no. 151/2001).

8. Return to work (Clause 6)

Workers returning from parental leave are not entitled to change their working hours and/or patterns for a set period of time based on the leave or their situation as parents, and neither are employers obliged to consider and respond to such requests. To put it differently, the fact that they have been on leave or that they are parents does not give them the right to change their working hours. However, Article 9 of Act no. 53/2000 provides for the allocation of part of the Fund for Family Policies to businesses that enforce collective agreements on positive actions aimed at allowing parents, also after a period of parental leave, to adopt a flexible working time schedule, through part-time work, telework, home-work, flexitime and other measures. In addition, Article 12*bis* of legislative decree 25.2.2000 no. 61 provides that: ‘if a worker (man or woman) with a cohabiting child below 13 years of age or a handicapped child requests that his contract is changed from full time to part time, then his request shall be given priority.’ These provisions are not specifically designed for parents returning from parental leave, and at first sight it seems that parents who wish to change their working times after their return from parental leave, even if their child is not cohabiting with them, cannot for example rely on Article 12*bis*. It therefore seems that Clause 6(1) of Directive 2010/18 is not fully implemented, because workers returning from parental leave are not generally and explicitly entitled to change their working hours and/or patterns for a set period of time based on the leave or their situation as parents, and employers are not obliged to consider and respond to such requests.

Article 32 of Decree no. 151/2001, as a consequence of the implementation of Directive 2010/18/EU, states that during the leave period employers and employees can make, if necessary, arrangements for appropriate reintegration measures, taking into account what is provided by collective agreements. Such arrangements might include working time patterns, in which case the obligations arising from Clause 6(1) would probably be met in practice.

Interpello no. 68/2009 to the Ministry of Labour may also be relevant in this context. It stipulates that the employer must assess with utmost care any solution that may accommodate the employee’s parental duties, in particular through a different organisation of the work, or through flexible working times.²⁹⁹ However, it is doubtful whether these provisions create a right that would be enforceable in court.

9. Time off from work on grounds of force majeure (Clause 7)

According to Articles 47 to 52 of Decree no. 151/2001, both parents, alternatively, may take time off from work if a child younger than 3 becomes ill; the leave is allowed to last for the whole duration of the child’s illness (without limits). The parents, alternatively, may also take up to five days per annum off from work, if a child between 3 and 8 becomes ill. Leave of absence for a sick child is unpaid. However, notional contributions are calculated when the child is younger than 3. These are reduced when the child is between three and eight, but the amount can be fully made up through redemption of contributions. Periods of leave of absence for a sick child count toward length of service, but they do not count as regards paid or unpaid holidays and Christmas bonuses. Leave is also allowed when the child has been adopted or is in official custody: the 3-year age limit is increased to 6, and the 6-year one to 12. However, if the child was between 6 and 12 when adopted or taken into foster care, leave is only granted for the first three years following the child’s entry into the family. The same regulations apply to the civil service. Civil servants, however, enjoy more favourable collective bargaining conditions than workers in the private sector.

Article 4 of Act no. 53/2000 also provides for a leave for death or serious illness. This may be taken by a private or public sector employee upon the death or serious illness of a spouse or of another relative in the second degree, whether or not they lived or live together, or of anybody who belongs to the registered family of the employee. Leave consists of the

²⁹⁹ Available at: <http://www.lavoro.gov.it/Strumenti/interpello/Documents/682009.pdf>, accessed 18 December 2014.

right to take a maximum of three days off from work per year. The wage for the days of leave is paid by the employer and not by publicly financed social security.

10. Final provisions (Clause 8)

Italian legislation provides for more favourable provisions than those set by Directive 2010/18/EU. This as regards length of leave; provision on a non-transferrable basis (just 2 months out of 6 for each parent can be transferred); parental leave and the allowance paid during that period are not subject to qualification periods whatsoever; postponement of the granting of parental leave is authorised only in the sectors of security/defence and firemen; there is no provision for special arrangements as regards small enterprises; high-level provisions for parents of children with a disability or long-term illness; incentives for working fathers to take the leave; application of the same sanctions system as that which applies to discrimination in relation to any threat to the enjoyment of parental leave and respective rights; the availability of leaves paid by the social security system.

11. Sanctions (Article 2)

Less favourable treatment related to pregnancy, motherhood or fatherhood, also adoptive, as well as the respective rights, is regarded as direct sex discrimination. The same goes for dismissals linked to pregnancy, maternity and the taking of maternity or parental leave, which are considered equal to discriminatory dismissal. The consequence is that all remedies and sanctions provided by anti-discrimination legislation are applicable. In particular, as regards dismissals, the special remedy of reinstatement provided by Article 18 of the Worker's Statute is enforceable (Article 54 Decree No. 151/2001). More in general, the remedy of nullification is enforceable for discriminatory acts. The revocation of the employer's public benefits or even the exclusion, for a certain period, from any further awarding of financial or credit incentives or from any public tender is also provided as a remedy in the event of established direct or indirect discrimination. Administrative sanctions are provided for the protection of motherhood and fatherhood. Thus the system of sanctions is effective, dissuasive and proportional.

12. Case law

There is no case law (or legal provision) related to parental, adoption and/or time-off leave that is contrary to the relevant case law of the European Court of Justice. There is no national case law related to parental, adoption or time-off leave which provides more favourable rights than the provisions of the Directive, existing national provisions and/or case law of the European Court of Justice.

13. Practice and other relevant issues

In Italy, the leave system described is basically used by women. It is quite unusual in Italy for fathers to take parental leave. In 2012, according to Istat data,³⁰⁰ 284 641 parents took parental leave: 253 442 women and 31 199 men, most of them in the central to northern regions; this means that about 11 % of leaves is taken by men and 89 % by women. The gender pay gap and the fact that men are the main breadwinners has a great influence on this. As parental leave benefits are calculated as a percentage of the worker's pay, it is more convenient for families to lose part of the woman's pay than of the man's pay, because men earn much more than women and the percentage of pay lost in the event of parental leave is higher for men than for women. As a measure to encourage fathers to take parental leave, the maximum total length of the leave awarded per child was increased from ten to eleven months

³⁰⁰ Istat, *Report on social cohesion 2013*, available at: <http://www.istat.it/it/archivio/108637>, accessed 7 April 2014.

if the father uses at least three months. Moreover, to reduce the negative effects of parental leaves on the organisation or businesses, it is provided that employers can offer fixed-term contracts, by way of exception starting up to one month before the leave begins (or longer if provided by collective bargaining), so that the worker taking leave can train his or her replacement. This means that when the employee goes on leave, the employer can start the fixed-term contract for the replacement of the worker on leave one month before the beginning of the leave, in order for the replacement to be trained by the employee who will go on leave. For small companies (employing fewer than 20 workers), a 50 % reduction in contribution is provided for the recruitment of persons replacing workers on parental leave (Article 4 Decree no. 151/2001).

Act no. 92/2012 (better known as the Fornero labour market reform) added another modality of application of parental leave which results in a weak attempt at making services for children more available. It concerns the introduction of paid vouchers for baby-sitting services as an alternative to parental leave: vouchers are made available to mothers from the end of compulsory maternity leave for the following eleven months in place of parental leave; the amount of the voucher depends on the family income. The fact that the vouchers are not made available to fathers can be regarded as a step backward in relation to the recognition of the relevance of the role of paternity in the labour market, which is very difficult to reconcile with the principle of equality. Moreover, the result of this provision is to increase the use of services and to decrease the time that parents spend with their children.

Finally, a weak point remains in Italian legislation, despite Article 9 of Act no. 53/2000 (which finances businesses who enforce collective agreements on positive actions aimed at allowing parents to adopt a flexible working-time schedule, even after parental leave) and Article 12*bis* of legislative decree 25.2.2000 no. 61. Workers returning from parental leave are not generally and explicitly on the basis of a clear legislative provision entitled to a right to request changes to their working hours and/or patterns for a set period of time, based on the leave or their situation as parents. Furthermore, it is not explicitly stipulated that employers are obliged to consider and respond to such requests.

LATVIA – Kristīne Dupate

1. Context

Latvian law provides for the right to pregnancy/maternity leave, paternity leave, parental (childcare) leave and adoption leave. All types of leaves are regulated by two branches of law: employment law (the Labour Law³⁰¹) and social security law (the Law on State Social Allowances³⁰² and the Law on Maternity and Sickness Insurance³⁰³). Employment law regulates the rights to leaves with regard to employment relationships while social security law covers the rights to social allowances provided by statutory social security and insurance schemes during such leaves. The rights to leaves provided by the employment law do not always ‘coincide’ with the rights to statutory allowances under social security law, which in practice restricts parents’ options to use the leaves regarding when and how they want to use their leave.³⁰⁴

Each father has a right to paternal leave of ten calendar days and this leave entitles them to an allowance under the statutory social security system in an amount equal to the maternity/pregnancy allowance.³⁰⁵ The right to paternal leave may be exercised only until the child is two months old.³⁰⁶

³⁰¹ *Darba likums*, OG No.105, 6 July 2001.

³⁰² *Valsts sociālo pabalstu likums*, OG No.168, 19 November 2011.

³⁰³ *Likums ‘Par maternitātes un slimības apdrošināšanu’*, OG No.182, 23 November 1995.

³⁰⁴ See in detail Section 5.

³⁰⁵ This is 80% of the social security contribution salary, as stipulated in the Law on Maternity and Sickness Insurance (*Likums ‘Par maternitātes un slimības apdrošināšanu’*), OG No.182, 23 November 1995.

³⁰⁶ Article 155(1) of the Labour Law (*Darba likums*).

Parental and adoption leaves are formally different. There is a special adoption leave and a right to general parental leave on account of adoption. The Labour Law stipulates a right to adoption leave for an adoptive parent of ten calendar days if the child is younger than three years old (Article 155(5)) and a right to parental leave for both biological and adoptive parents of a period of eighteen months until the child reaches the age of eight (Article 156(1)).

The general principle is that pregnancy/maternity/paternal leave, adoptive leave and parental leave cannot coincide from the perspectives of employment and social security law, meaning that an individual parent cannot be on several types of leave during the same period.

However, leaves may coincide from the family perspective. Under employment law, it is possible for one parent to be on pregnancy/maternity (126 calendar days) or paternity leave (ten calendar days) while the other parent is on parental leave (eighteen months)³⁰⁷ or both parents may be on parental leave during the same period. Only adoption leave cannot coincide, because Article 155(5) of the Labour Law explicitly stipulates that adoptive leave (ten calendar days) has to be provided to one of the adoptive parents only. One or both of the parents may be on parental leave, but only one will be entitled to childcare allowance paid by the statutory social security system.

The leaves in principle may not coincide from the perspective of social security law, meaning that both parents are not entitled to social security allowance on account of family-related leaves, with the exception of pregnancy/maternity and paternal leave when both parents are simultaneously entitled to social security allowances.³⁰⁸ At the same time a father is not entitled to any social allowance on account of parental (childcare) leave if a mother is still on pregnancy/maternity leave.³⁰⁹ When leaves coincide, one of the parents will be without benefits.

2. Implementation of Directive 2010/18

No special implementing measures were taken with regard to Directive 2010/18/EU, because Latvian law already provided for a much higher level of protection.³¹⁰ Also, Latvia did not elaborate implementation tables, partially because this is no longer required by the EU Commission and partially because no special implementing measures were taken.³¹¹

3. Purpose and scope (Clause 1)

The right to parental (childcare) leave is fully applicable in both sectors – public and private. The right to parental (childcare) leave in both sectors is regulated from the employment law perspective by the Labour Law and from the social security law perspective by the Law on State Social Allowances and the Law on Maternity and Sickness Insurance. The same general regime is applicable in the public sector because the general law regulating remuneration in the public sector stipulates that the leaves must be awarded in accordance with the regulations provided by the Labour Law.³¹² The statutory social security system including social insurances is equally applicable to all categories of workers, civil servants and state

³⁰⁷ Articles 154, 155 and 156 of the Labour Law (*Darba likums*).

³⁰⁸ Sections II and IIA of the Law on Maternity and Sickness Insurance.

³⁰⁹ Article 10⁴(2) of the Law on Maternity and Sickness Insurance.

³¹⁰ Telephone interview with the Director of the Employment Relationship and Health and Safety Protection Department of the Ministry of Welfare (31 March 2014).

³¹¹ Telephone interview with a senior official of the Department of International Cooperation and the EU Policy Department of the Ministry of Welfare (31 March 2014).

³¹² Article 40(1) of the Law on Remuneration of Employees and Officials of the State and Municipal Institutions (*Valsts un pašvaldību institūcija amatpersonu un darbinieku atlīdzības likums*), (OG No.199, 18 December 2009) provides that the right to parental (childcare) leave in general is regulated by the Labour Law, unless provided otherwise by the present law. The Law on Remuneration of Employees and Officials of the State and Municipal Institutions only provides for such different rights with regard to the pay and bonuses during family-related leaves, which are more favourable than the generally applicable regime (telephone interview with the Head of Remuneration Unit of the Ministry of Finance (31 March 2014).

officials.³¹³ The latter two categories may be entitled to more favourable rights with regard to pay or bonuses according to special legal regulations.

The right to parental (childcare) leave is applicable on the same terms to workers with atypical contracts (fixed-term, part-time, and temporary agency workers).³¹⁴

The right to parental leave is also provided to self-employed persons, because the law entitles them to statutory social allowances (and requires mandatory social insurance contributions for such purpose).³¹⁵

4. Parental leave (Clause 2)

The duration of the parental leave is equal for all workers and public sector officials and is eighteen months per parent from the employment law perspective.³¹⁶ A worker has the right to take parental leave (in one period, or split into various periods of time) until the child reaches the age of eight. Such right is equally applicable to both biological and adoptive parents.³¹⁷ The right to parental leave is individual and may be taken by either parent irrespective of whether the other parent is working or is on parental leave too. Since such right is strictly individual there is no possibility to transfer all or part of the parental leave to the other parent.

Latvian law includes no provisions regarding surrogacy. In the territory of Latvia surrogacy in principle is not possible, because in the event of births in Latvian territory the woman giving birth would automatically be considered as the mother.³¹⁸ However, this does not exclude the possibility for a child to be adopted by their biological parents or to immediately recognise the paternity of the biological father.

The main document entitling a parent to parental leave is a birth certificate stipulating the parents and consequently granting them the right to claim parental leave. If a person has acquired parental rights by way of surrogacy outside Latvia, i.e. in another country regulating such situation, and parental rights are attested by official documents of the authorities of that country, 'in the eyes' of Latvian law such parent(s) would be similar to any other (biological or adoptive) parents and would therefore be entitled to parental leave on the basis of the general regulations.

5. Modalities of application (Clause 3)

From the formal perspective of employment law, parental leave may be full time. It may also be taken in full-time form during separate periods until the child reaches the age of eight.³¹⁹ There is no limit to the number of separate periods that may be taken. In practice parental leave may also be taken in part-time form, because Article 134(1) stipulates the obligation for employers to provide part-time employment if this is requested by the parent of a child under the age of fourteen. However, according to the law the latter form is not expressly recognised as part-time parental leave.

Latvian law does not regulate issues regarding notice periods for taking and returning from parental leave. The same applies to the right of an employer to postpone the parental leave for operational reasons. At the same time it follows from the Labour Law that an employer in principle has no right to refuse the granting of parental leave immediately, because it is closely connected with social security rights. Parental leave allowance (in the

³¹³ The Law on State Social Security (*likums 'Par valsts sociālo drošību'*), OG No.144, 21 September 1995; the Law on Statutory Social Insurance (*likums 'Par valsts sociālo apdrošināšanu'*), OG No.274/276, 21 October 1997.

³¹⁴ The Labour Law (*Darba likums*), OG No.105, 6 July 2001; the Law on Statutory Social Insurance (*likums 'Par valsts sociālo apdrošināšanu'*), OG No.274/276, 21 October 1997.

³¹⁵ Article 10.4(1)(3) of the Law on Maternity and Sickness Insurance or Article 7 of the Law on State Social Allowances.

³¹⁶ Article 156 of the Labour Law.

³¹⁷ Article 156 of the Labour Law.

³¹⁸ The Civil Law (*Civillikums*), OG No.22, 10 June 1993.

³¹⁹ Article 156(1) and (2) of the Labour Law.

amount of the salary) under the statutory social insurance system is provided only until the child is eighteen months old. The right to allowance under social security is a decisive factor in Latvia, taking into account the average income of the population. For this reason, postponing the parental leave may have serious consequences for the actual possibility to use such right.

The right to parental leave must be provided without any requirement on the length of service. This also applies to fixed-term workers. However, if a fixed-term contract expires during parental leave an employer is not under the obligation to extend it.

The legal regulations on parental leave are applicable to all types of businesses, irrespective of size.

There are no special leaves for parents of disabled children from the perspective of employment law, with the exception of the right to claim part-time employment until the disabled child reaches the age of eighteen. Under social security law, and in case of illness of a child, all parents (irrespective of whether a child is disabled, and until the age of fourteen) are entitled to paid sick leave for up to fourteen days, or 21 days in case of hospitalisation per individual instance.³²⁰

6. Adoption (Clause 4)

Under employment law, adoptive parents do not have any additional rights other than those described in Section 1, i.e. the right of one adoptive parent to ten days of adoptive leave and the general right to parental leave on the same conditions as biological parents (for both parents).³²¹

The ten days of adoptive leave do not include a right to any allowance under social security law as is true for pregnancy/maternity and paternal leave, but an adoptive parent or parents have the right to a lump-sum adoption allowance under the social security system.³²² Furthermore, the right to parental allowance is not only granted to adoptive parents who have officially become parents but also to parents in the process of adoption.³²³ The Labour Law and social security law are inconsistent with regard to the status of adoptive parents, because the Labour Law formally recognises only such adoptive parents who have officially become parents after completion of the adoption process. Such inconsistent wording is the result of different and uncoordinated amendments to social security law only. However, interpretation methods obviously require that the rights to parental leave under the Labour Law must also be interpreted in accordance with the social security law provisions, i.e. that the right to parental leave under employment law is also granted to parents who are not officially parents yet but are in the process of adoption and have a child living with them.

7. Employment rights and non-discrimination (Clause 5)

There are no explicit provisions stipulating that less favourable treatment on the grounds of the use of the right to parental leave constitutes discrimination. However, since the absolute majority of the persons taking parental leave are women, indirect discrimination may be at hand. According to data provided by the Ministry of Welfare in February 2014, 35 512 women were recipients of parental (childcare) allowances and only 1 918 men. The average amount of parental allowance was EUR 220.09 for women and EUR 362.64 for men.

There are two provisions stipulating the obligation to provide not less favourable working conditions after parental leave. Article 156(4) of the Labour Law requires the provision of the same work after parental leave and not less favourable working conditions as before the leave, and if this is not possible the provision of work of similar or equal value. At the same time Article 149(6) provides that after all types of leave (including parental leave) an employee

³²⁰ Article 13 of the Law on Maternity and Sickness Insurance.

³²¹ Article 155(1) and 156(1) of the Labour Law.

³²² Article 3(2)(3) of the Law on State Social Allowances.

³²³ Article 10⁴(1) of the Law on Maternity and Sickness Insurance.

must be provided with the same working conditions and improvements of employment conditions as if he/she had not been on leave but had remained in active employment. The two norms are contradictory, because the one requires provision of working conditions similar to those before the parental leave, while the other requires provision of all improvements in working conditions which have taken place in the absence of the employee. In this context there is uncertainty regarding whether the term ‘working conditions’ under Article 149(6) also includes pay,³²⁴ i.e. if a person after returning from parental leave is entitled to an immediate salary increase if the salaries in the business have been raised in general during his/her absence on account of parental leave.

The more favourable right under Latvian law, exceeding the minimum requirements of Directive 2010/18/EU, is the right to acquire seniority, i.e. according to Article 156(3) of the Labour Law the time spent on parental leave must be considered as time actually worked for the purposes of seniority. However, it is envisaged by the amendments of the Labour Law currently pending in Parliament that such right will be repealed.³²⁵

There are no special regulations on the status of employment contracts during a leave, but it follows that an employment contract must be considered as effective although without any obligation on the part of employer to provide any pay (including benefits under occupation social security scheme) or any other benefits.

The social security protection in Latvia in substance is provided by the statutory (state) system. Occupational social security systems are very rare. The healthcare system is also statutory and covers all persons legally residing in Latvia.

Parental leave is fully remunerated by the statutory social security system. Parental allowances may be awarded either under the statutory social insurance system³²⁶ or under the state social allowance system.³²⁷

Currently the statutory social insurance system provides the parental allowance as a percentage of the normal salary. The amount of the statutory social insurance parental allowance constitutes 70 % of the average social insurance contributions or, in other words, 70 % of the gross salary. Such amount in principle is equal to (or a little higher than) a salary received by a parent during active employment.³²⁸ Persons in active employment after the deduction of taxes are entitled to approximately 69 % of the gross salary.³²⁹ Such allowance is provided until the child reaches the age of twelve months.

Starting on 1 October 2014 the system will change. Parents who are ensured under the statutory social insurance system and are on full-time parental leave will be entitled to parental allowance in an amount equalling 60 % of their average salary (statutory social insurance contribution salary) until the child reaches the age of twelve months. If a parent were to opt for receiving the parental allowance until the child reaches the age of eighteen months the amount of the allowance will be 43.75 % of their average salary. If a parent were to decide to stay in full-time or part-time employment during a period that the child is younger than eighteen months, he/she will be entitled to 30 % of the parental allowance (30 %

³²⁴ Telephone interview with the Director of the Employment Relationship and Health and Safety Protection Department of the Ministry of Welfare (31 March 2014).

³²⁵ Proposal for the Amendments to the Labour Law (*Grozījumi Darba likumā*) No. 756/Lp11, available in Latvian at the homepage of Parliament (*Saeima*) available at: <http://titania.saeima.lv/LIVS11/SaeimaLIVS11.nsf/0/1016FA82F40AC4EFC2257BC50037F713?OpenDocument>, accessed 3 April 2013.

³²⁶ Contributory system, mandatory for all employees; the Law on Statutory Social Insurance (*likums ‘Par valsts sociālo apdrošināšanu’*), OG No.274/276, 21 October 1997.

³²⁷ Applicable to those not employed or not having sufficient qualifying periods under statutory social insurance system; the State Social Allowance Law (*Valsts sociālo pabalstu likums*), OG No. 168, 19 November 2011.

³²⁸ Article 10.4(1) of the Law on Maternity and Sickness Insurance.

³²⁹ The income tax for employee salaries is 24 % (the Law on Residents’ Income Tax; *likums ‘Par iedzīvotāju ienākuma nodokli’*, Official Gazette No. 32, 1 June 1993); statutory social security contributions constitute 34.09 %, but employees only have to pay 10.5 % and 23.59 % must be contributed by the employer (the Law on Statutory Social Security; *likums ‘Par valsts sociālo apdrošināšanu’*, Official Gazette No. 274/276, 21 October 1997). After taxes and social security contributions, employees are therefore entitled to approximately 69 %.

of the full allowance (60 % of the salary)).³³⁰ In addition, one of the parents will be entitled to another type of allowance – a flat-rate state social allowance – childcare allowance until the child reaches the age of eighteen months in the amount of EUR 171 per month. The latter allowance will also be provided to parents who are not employed.³³¹

The new system is to provide for a much higher degree of flexibility, because it grants the right to state support in the form of social allowances to parents who decide not to interrupt their career. The current system is seen as a serious obstacle to equal opportunities in the labour market for women, because the social security system does not allow combining parental leave with employment at all. At the same time any type of allowance under the new system will remain available to one of the parents only, which would still fail to encourage the sharing of parental duties while remaining in active employment.

8. Return to work (Clause 6)

Under Article 134(2) of the Labour Law, an employer is under the obligation to provide part-time work if requested by a parent of a child under the age of fourteen. This is not presently considered parental leave, but later this year parents in active employment will be given the right to a partial parental allowance, and the Ministry of Welfare is among those who consider that such a situation may amount to part-time parental leave.

No special integration measures are provided by Latvian law concerning the maintenance of contact between a parent on parental leave and the employer.

9. Time off from work on grounds of force majeure (Clause 7)

Article 147(2) of the Labour Law provides for a right to time off in case of *force majeure* or other exceptional circumstances. In such a case an employee has an obligation to report to the employer immediately and such situation may not be reason for termination of the employment relationship. The Labour Law does not contain any more specific rules on the procedure of granting (recognition of) such time off, the number of time-off requests within a particular period of time or the length of such time-off periods. This time off is unpaid.

10. Final provisions (Clause 8)

Formally Latvia has implemented Directive 2010/18 completely.

However, substantially there might be some problems regarding the opportunities for flexible combination of professional and personal life. This mainly concerns the rights under statutory social security law, which, taking into account the low level of income of workers, is a predominant condition for the possibility to use the rights to parental leave under employment law. As explained in Section 7, neither the current nor the future social security rights for parents are sufficiently flexible to ensure equal opportunities (and level of income) in the labour market for men and women, mainly because both parents are not and will not be entitled to social allowances during the same period of time.

Latvian law formally provides many rights with regard to parental leave that are more favourable than what is required by Directive 2010/18/EU, in particular with regard to the length of the leave (eighteen months), entitlement (individual rights for both parents), the rights to statutory social insurance (parental) and to flat-rate state social (childcare) allowances. However, substantially even this higher level of rights is not sufficient to promote equality of parents in the labour market in combination with the retention of equal levels of income.

³³⁰ Example, if a parent's gross salary were EUR 1 000, then the amount of parental allowance would be EUR 600 or 60 % of the social insurance contribution salary. This applies to employed parents who are on full-time parental leave. If however a parent decided to stay in active employment he/she would be entitled to 30 % of the parental allowance, i.e. 30 % of EUR 600 (or normal parental allowance, which would constitute EUR 180.

³³¹ Article 10⁶ of the Law on Maternity and Sickness Insurance. Amendments OG No.228, 22 November 2013.

11. Sanctions (Article 2)

Parents whose rights have been breached from the employment rights perspective have the right to bring an action before a regular (employees, civil procedure) or administrative (state officials) court under the same generally applicable regime as in employment or service.³³² No special rights or sanctions are envisaged in such a situation. A parent may claim provision of the rights breached, compensation for the loss of earnings (e.g. due to non-provision of the same or similar work), reinstatement (in case of unlawful dismissal) and other connected rights. In the view of the expert, these sanctions are not sufficiently dissuasive or proportional.

Formally, the national courts are accessible for the victims of violations of employment law. However, they do not always go to court. One of the reasons for this is the cost of legal services, which is high, and another is the fear of victimisation taking into account the small size of the population of Latvia.

12. Case law

There might be a problem with compliance with the CJEU decision in *Lyreco Belgium*.³³³ The problem is that employment law does not formally recognise a concept such as ‘part-time parental leave’ although Article 134(2) requires provision of part-time work for a parent with a child under the age of fourteen at his/her request.

Problems may arise in connection with the provision of different entitlements for workers on part-time parental leave. In particular, the problem arises from the legal regulations regarding the calculation of average pay. According to Article 75 of the Labour Law the average pay is to be calculated on the basis of the salary of the last six months. Average pay is used for the calculation of various payments, for example, pay during annual leave, dismissal compensation, and compensation of idle time. In the view of the current author it follows from the CJEU decision in *Lyreco Belgium* that such payments in case of part-time parental leave must be calculated on the basis of the full-time salary. At the same time there might be a problem in cases where the ‘part-time parental’ leave lasts for a very long period (e.g. fourteen years as granted under the Labour Law). Thus, first, the legislator must recognise the term ‘part-time parental leave’ under the Labour Law and distinguish between part-time parental leave and long-term provision of part-time work.

The present author is not aware of any national case law contradicting EU law regarding parental leave issues. On the contrary, the Senate of the Supreme Court of Latvia has demonstrated a very careful attitude towards the application of EU law in the respective field. It follows from this fact that two important cases decided by the CJEU in a preliminary reference procedure – *Danosa*³³⁴ and recently *Riežniece*³³⁵ – originated from the Latvian Supreme Court.

13. Practice and other relevant issues

All types of leaves described in this report are used in practice. However, they are used only insofar as financial support from the statutory social security system is available, because of the low level of income.

Parental leave is, of course, predominantly taken by the mother.³³⁶ The same may be presumed with regard to adoption leave, although such data is not available.

As described above (Section 7), the current and the future social security system does not really enable the sharing of family responsibilities between both parents, because the rights to

³³² The Civil Procedure Law (*Civilprocesa likums*), OG No.326/330, 3 November 1998; the Administrative Procedure Law (*Administratīvā procesa likums*) OG No.164, 13 December 2001.

³³³ Case C-588/12 *Lyreco Belgium NV v Sophie Rogiers* [2014] n.y.r.

³³⁴ Case C-232/09 *Dita Danosa v LKB Līzings SIA* [2010] ECR I-11405.

³³⁵ Case C-7/12 *Nadežda Riežniece v Zemkopības ministrija and Lauku atbalsta dienests* [2013] n.y.r.

³³⁶ Data provided by the Ministry of Welfare in February 2014.

parental and childcare allowances are only granted to one of the parents during the same period of time.

LIECHTENSTEIN – Nicole Mathé

1. Context

In Liechtenstein the main instruments aimed at facilitating the reconciliation of work, private and family life are maternity leave and parental leave. Maternity leave is reserved for mothers and parental leave can be taken by both parents. Distinct rights to paternity leave are not recognised but the national legal system recognises distinct rights to parental and adoption leave.

2. Implementation of Directive 2010/18

Directive 2010/18 was implemented by the amendment to the Civil Code (*Allgemeines Bürgerliches Gesetzbuch, ABGB*) in December 2012.³³⁷ Existing legislation with regard to parental leave was amended according to the Directive mentioned above. To the expert's knowledge no tables have been published to illustrate the correlation between the Directive and transposition measures. The specified and cited law 2012/402 does not refer to each single provision, but in the sections below the articles corresponding to the content of the Directive will be described.

3. Purpose and scope (Clause 1)

National legislation is applicable to all private and public employment contracts. Normally this also includes contracts of employment related to part-time work, fixed-term work or with a temporary agency, under the precondition that the employment contract has lasted for more than one year or has been concluded for more than one year.³³⁸

4. Parental leave (Clause 2)

The total duration of parental leave is four months, having been revised with the implementation of Directive 2010/18. Before the entry into force of the Directive the duration was only three months. The duration is the same for the public and the private sector. The maximum age of the child for the parent to be entitled to parental leave is three, whereas the age limit for adopted children is five. Legislation does not contain explicit norms concerning the individual right of parental leave for each of the parent nor provisions concerning the transfer of a part of the parental leave from one parent to the other. Considering these facts together the aim of the Directive is achieved if both parents choose to take parental leave in separate parts. Without any case law it is hard to automatically qualify the wording of the law as non-compliant with the Directive. This very wide range of dividing up parental leave (see in Section 5) even on an hourly basis is at least a modality requested in the Directive and also encourages fathers to take parental leave. In general fathers are not so flexible as to take a whole month, but several hours a week or a fixed day per week over a certain period will be easier to negotiate with the employer. In order not to lose one month at all by the other parent (because the father will not take a whole month at once) such a flexible solution which aims at gender equality for both men and women is preferred. Nevertheless it has to be conceded that this could have been made clearer by the legislator, e.g. by specifying which number of

³³⁷ Official Gazette, LGBl. 2012/402, available at: <https://www.gesetze.li/Seite1.jsp?LGBl=1003001.xml&Searchstring=ABGB&showLGBl=true>, accessed 10 April 2014.

³³⁸ Paragraph 1173a Article 34a (1) Civil Code.

hours and days corresponding to one month has to be taken by the other parent. Surrogacy is not allowed in Liechtenstein.³³⁹

5. Modalities of application (Clause 3)

If the employee has been employed for more than a year or if the contract is concluded for more than one year, the employee is entitled to four months' parental leave. In case of successive fixed-term contracts with the same employer the sum of these contracts is taken into account for the purpose of calculating the qualifying period. The right to parental leave is established upon the birth of a child and leave can be taken until the child is three years old. The right is established at the birth of a child, but this does not mean that the leave starts directly at the moment of birth. For mothers, parental leave can start after the end of maternity leave. In the case of adoption or the permanent care of a foster child, leave can be taken until the child is five years old. The employee has to inform the employer of the intended period of parental leave three months in advance. The employer may request that the employee select a different period if there are reasonable work-related grounds, such as the fact that the work in question is seasonal work, that no replacement can be found in time, that a certain number of other employees are all asking for parental leave at the same time, or because the employee's position in the company is of strategic importance. In companies with fewer than 30 employees the employer has the right to defer the period of parental leave in all cases where the planned leave would interfere with the operation of the company. The employee is entitled to take parental leave on a full-time, part-time or hourly basis, taking into account the justified interests of the employer and the employee (Paragraph 1173a Article 34(a) and (b) ABGB). According to Paragraph 1173a Articles 45(c) and 46 ABGB the notice period is two or three months depending how long the employment contract has lasted. If the employer gives notice only to avoid the establishment of the rights of the employee based on the employment contract, this constitutes abuse. This general norm also covers the right to parental leave.

6. Adoption (Clause 4)

To the knowledge of the expert, there are no additional measures.

7. Employment rights and non-discrimination (Clause 5)

As mentioned above in Section 5, giving notice to an employee will be qualified as abusive if he or she is prevented from taking parental leave, which is a right of the employee based on the employment contract. After parental leave, the employee has the right to return to his or her former work or, if this is not possible, to equivalent or similar work (Paragraph 1173a Article 34(c) ABGB). As parental leave is unpaid leave in Liechtenstein, the employment contract is suspended during that period. The employee also has to pay the contributions for social benefits during the parental leave on his/her own (e.g. continuation of pension contributions). Rights acquired by the worker on the date on which parental leave starts are maintained as they stand until the end of the parental leave. Thus the employee returns to the workplace under conditions which shall not be less favourable as when starting the parental leave (Paragraph 1173a Article 34(c) ABGB).

8. Return to work (Clause 6)

Pursuant to Paragraph 1173a Article 34 c(2) ABGB, workers returning from parental leave can request changes to their working hours and/or patterns for a set period of time. When responding to such requests the employer is obliged to consider the justified interests of the employee. The modality of how to maintain contact between employer and employee during the parental leave is up to both of them and is not specified by law.

³³⁹ Paragraph 136 Civil Code.

9. Time off from work on grounds of force majeure (Clause 7)

Paragraph 1173a Article 29(5) ABGB governs the absence of employees in case of force majeure for urgent family reasons. Employees are entitled to time off from work from one to three days per incidence in case of sickness or accident of family members living in the same household substantiated by medical certificate. This applies only until other care is organised.

10. Final provisions (Clause 8)

In the view of the expert, the Directive should also provide for a minimum allowance during the period of parental leave in order to achieve the aim of gender equality. The lack of funds to cover the period of parental leave especially prevents fathers from taking the parental leave. EU statistics have repeatedly shown that this is a very true and important fact, and this goes together with the aim of the Directive to achieve gender equality by the introduction of the non-transferable month, in order to encourage fathers to take parental leave. But for the whole family it is very difficult to reconcile family and professional life if costs are not covered sufficiently. However, it is also true that Liechtenstein has not introduced more favourable provisions concerning allowances during the parental leave. Without any case law on the topic it is hardly possible to draw a definitive conclusion on whether legislation is consistent with the Directive.

11. Sanctions (Article 2)

The established system of sanctions in labour law is applicable to violations of rules provided by the Directive. If the employer gives the employee notice on abusive grounds, he or she can submit objections in writing to the employer. If the two parties cannot agree on the continuation of the employment contract, the employee can lodge a claim of redress (damages) before the court (Paragraph 1173a Articles 47 and 48 ABGB).

12. Case law

There is no case law on this topic.

13. Practice and other relevant issues

It can be presumed that parental leave is actually used in practice and more frequently taken by mothers. Unfortunately there are no data to describe the current situation in Liechtenstein.

Liechtenstein has made a short analysis of the situation of the country concerning reconciliation of family and profession, which was included in a Swiss Handbook³⁴⁰ at the end of the year 2007. This handbook gives practical examples and supports small and medium-sized enterprises when implementing measures to achieve a family-friendly management approach. The central message is that enterprises that support their employees who have family duties thereby also support the enterprise itself.

The four family-friendly companies in Liechtenstein presented in the Handbook had introduced measures such as company kindergartens, flexible working-time models, part-time work in managerial functions, flexible working hours, re-entry opportunities, family-oriented leaves, sabbaticals, equal opportunities human resources development, ideas management, optimising mobility by a company car, promotion of carpooling, club for employees, adapted working organisation, job-sharing and teleworking.

The Labour Law³⁴¹ governs the working hours and rest periods for employees with family obligations. According to these rules the employer has to consider employees with

³⁴⁰ Handbook Reconciliation of family and profession, 2007, available at: http://www.llv.li/files/scg/pdf-llv-scg-kmu-handbuch_d-2.pdf, accessed 12 April 2014.

³⁴¹ Article 36 *Arbeitsgesetz*, LGBI. 1967/6.

family obligations when fixing working hours and rest periods. Family obligations are the raising of children until the age of 15 and the care of family members or related persons in need. Such employees have to agree to overtime work and have the right to have a lunch break of at least one and a half hour.

LITHUANIA – *Tomas Davulis*

1. Context

The Lithuanian labour code³⁴² (Labour Code) consolidates several different types of special purpose leave aimed at facilitating the reconciliation of work, private and family life: maternity leave for women of 70 calendar days before the date of confinement and 56 calendar days after confinement (in the event of complications upon birth or multiple births – 70 calendar days), paternity leave for men from the day of childbirth until the child is 1 month old and parental leave (until the child reaches the age of 3). Parental leave is granted at the choice of the family and may be taken as a single period, or be distributed in parts. This individual right is granted to the mother 1 (or adoptive mother), the father (or adoptive father), the grandmother, the grandfather or any other relatives who are actually raising the child, and also to an employee who has been recognised as the guardian of the child.

The law does not expressly provide for special adoption leave – the adoptive father or adoptive mother or any other person actually raising the child may take the same parental leave. However, there is a special provision on parental leave in the case of adoption – the adoptive father or adoptive mother may take special parental leave of up to 3 months, in addition to the right to parental leave. Only children aged over three months can be adopted, therefore maternity leave is not relevant in the case of adoption.

2. Implementation of Directive 2010/18

No specific legislation has been adopted to implement Directive 2010/18 in Lithuania. No table has been drawn up and published to illustrate the correlation between the Directive and the transposing legislation.

3. Purpose and scope (Clause 1)

Employees in both the private and public sector are covered by the legislation on parental leave. The provisions of the Labour Code apply to employment relations based on the contract of employment. Civil servants work on another legal basis (public service contracts) but the labour legislation is applicable to them by virtue of Section 5 of the Law on Public Service which establishes the principle of the subsidiary application of labour laws in cases not stipulated by special provisions of the Law on Public Service.³⁴³

The rules on parental leave do not differ in relation to the contract of employment – they apply equally to the employment relationships of part-time workers, fixed-term contract workers or temporary workers.

4. Parental leave (Clause 2)

Traditionally for Lithuania, parental leave shall be granted until the child reaches the age of three years. This can be taken in a period of any duration on condition that it is after the child is born (or at the end of maternity or paternity leave), and until the child reaches the age of three. The provision has not been changed for decades, only the related social benefits have been considerably revised since 2008. Although the granting of parental leave until the child

³⁴² State Gazette, 2002, No. 64-2569.

³⁴³ State Gazette, 2002, No. 45-1708.

reaches the age of three is not contrary to Clause 2(1) of the Framework Agreement, it is considered a rather short period of time.

The right to take parental leave is granted at any time before the child reaches the age of three. In the case of adoption, the same rules apply but, in addition, parental leave of three months can be taken even after the term of three years has expired. Section 178 of the Labour Code provides that the individual right to parental leave shall be granted to the mother (or adoptive mother), the father (or adoptive father), the grandmother, the grandfather or any other relatives who are actually raising the child, and also to an employee who has been recognised as the guardian of the child. Parental leave shall be granted at the choice of the family and may be taken as a single period or be distributed in parts. Only one of those entitled may apply for parental leave at the same time but there is no mechanism by which to control this if the family members are employed by different employers. The legislator does not control the real exercise of the right to parental leave because the social benefits are controlled by the SODRA (the state's social insurance institution). The parents can take the parental leave in turns, but they cannot transfer their right to social benefits during the parental leave to the other parent. The right to at least one compulsory month of leave for one's own use is not granted.

5. Modalities of application (Clause 3)

In Lithuania there are no varieties of parental leave – there is only the full-time parental leave. Variations can be considered insofar as they concern state social security benefits – those on parental leave may choose whether they receive the benefit in the period before the child reaches the age of one year or the period before the child reaches the age of two – there are differences in the amount of social benefits if one option or the other is taken.

The parental leave shall be awarded on the basis of a written notice of 14 days. There are no cases concerning the non-granting of the leave or organisational difficulties on the employer's side. Section 180(2) of the Labour Code states that the employee intending to use this leave or to return to work before the end of the leave must give the employer a written notice to that effect at least 14 days in advance. A longer period of notice may be established in a collective agreement. The right to parental leave is in no way related to the employee's length of service or the type of contract – every employee with an effective contract of employment may apply for parental leave and the employer is obliged to grant that leave. The only hypothetical exception can be the case when the contract will end before the period of notice of 14 days will expire. However, even in this case the courts will most probably defend the employee's right to parental leave. This conclusion can be drawn from numerous court cases in which the court has held that the right of an employee to apply for parental leave is of an absolute nature and the employer may neither revise nor oppose the will of an employee.

There are no special rules or conditions for parents of children with a disability or a long-term illness to have access to parental leave. The Lithuanian labour legislation however provides for two forms of relief for those workers who are not connected with parental leave or the social security benefits paid in the case of parental leave. Those 'free of (state) charge' options are described below.

6. Adoption (Clause 4)

Adoptive parents (one of them) are entitled to take an additional leave of three months if they have not already used the parental leave with regard to this same child (Section 180(2) of the Labour Code). Just like in the case of parental leave, the adoptive parents may use this leave in turns, not exceeding the period of three months. The leave is granted upon the coming into force of the court's decision to allow the adoption which means that it cannot be postponed. If the child has not reached the age of three at the time of the decision, the adoptive parents may choose between the annual leave of three months or the leave before the child reaches the age of three.

7. Employment rights and non-discrimination (Clause 5)

Formally, the taking of parental leave can in no way constitute a ground for the different treatment of an employee. Section 180(3) of the Labour Code states that the employee shall retain his or her job (position) during the period of parental leave, the only exception being when the enterprise is dissolved.

In Lithuania there is a general prohibition on terminating the contract of employment of an employee who is on any kind of leave. Section 131(1) p. 1 of the Labour Code only allows the termination of a contract of employment in cases involving force majeure, such as the employee being criminally sanctioned with a custodial sentence which prevents him or her from continuing his or her work, the deprivation of special rights (eg. drivers licence) which are necessary to perform certain work, an inability to perform the duties on medical grounds or the liquidation of the employer etc. Giving an employee his or her notice is also prohibited.

However, there is no explicit prohibition of less favourable treatment, as is the case with maternity leave. As far as maternity leave is concerned, there is a special provision in Section 179(4) of the Labour Code – the employer shall ensure the right of employees to return to the same or an equivalent job (position) after this leave on conditions which are no less favourable to them, including wages, as well as to benefit from any improvement in conditions, including wages, to which they would have been entitled during their absence. This *proviso* was introduced in 2009 and had a clearly indicated objective to transpose Directives 2002/73/EC³⁴⁴ and 2006/54/EC.³⁴⁵ The analogous statement is however lacking with respect to paternity (Section 179-1 of the Labour Code) and parental leave (Section 180 of the Labour Code). Despite the fact that the legislator has not confirmed the same result for parental leave, the courts once underlined that the impact of both provisions shall be ‘almost equal’, thereby confirming the right of an employee to benefit from an improvement to the working conditions.³⁴⁶

There is no provision or current practice that would show that the rights acquired (or in the process of being acquired) by the worker would or could be ignored by the employer. The Labour Code only contains one provision which excludes the period of parental leave from periods which are considered as a ‘Length of Service Entitling Annual Leave’. Section 170(1) p. 3 states the year of employment for which annual leave is granted shall include all the periods when an employee retains his job (position) and is paid social benefits, with the exception of the period of parental leave. In other words, the periods of maternity or paternity leave would be taken into consideration when granting the employee annual paid leave, but the parental leave would not. The said provision could amount to indirect discrimination based on sex (an apparently gender-neutral provision is affecting more women as they are taking parental leave much more often than men) but there are strong indicators that the different treatment would be justified on the ground of social policy.

During the period of parental leave the contract of employment remains in force, but during this period the employee is freed from the obligation to perform his or her working duties. Employees on parental leave are considered to be members of the collective workforce (in accordance with Section 17 of the Labour Code). The only exceptions are related to collective law: the law on works councils³⁴⁷ and other laws on the transposition of EU directives 2009/38/EC,³⁴⁸ 2001/86/EC,³⁴⁹ 2003/72/EC³⁵⁰ eliminate employees on parental

³⁴⁴ Directive 2002/73/EC of the European Parliament and of the Council of 23 September 2002 amending Council Directive 76/207/EEC on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions OJ L 269 of 5 October 2002, pp. 15-20.

³⁴⁵ Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) OJ L 204 of 26 July 2006, pp. 23-36.

³⁴⁶ Vilnius regional court ruling of 27 May 2013 in case No. 2A-256-262/2013.

³⁴⁷ State Gazette, 2004, No. 164-5972.

³⁴⁸ Directive 2009/38/EC of the European Parliament and of the Council of 6 May 2009 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees OJ L 122 of 16 May 2009, pp. 28-44.

leave from the total number of employees within an enterprise. Employees on parental leave are not taken into account when establishing the total number of employees for the establishment or election of the works council, the European works council or the European Company works council or special negotiating committees. Consequently, they are not allowed to vote in the elections (e.g. Section 9(2) of the Law on works councils).

The employer is not obliged to pay the employee's salary or other benefits during parental leave, except in cases foreseen by individual contracts, collective agreements or other normative acts. Financial support for those on parental leave is provided by the state's social security scheme. During parental leave a worker is entitled to a state social security allowance paid by the State Social Insurance Fund according to the Law on Sickness and Maternity Social Security of 21 December 2000.³⁵¹

The economic crisis has had a huge impact on the level of social benefits for parents on parental leave. The amount of the allowance as well as conditions for payment have been revised on numerous occasions since 2008. It was previously the case that during the parental leave from the end of maternity (paternity) leave until the child reached the age of one, the employee was entitled to an allowance equal to 100 % of his or her previous remuneration, and 85 % until the child reached the age of two, subject to minimum and maximum limits. Since 1 July 2011 employees may opt for the one-year 100 % allowance or choose the two-year allowance where for the first year the allowance amounts to 70 % of the compensated salary and for the second year – 40 %. The second option allows parents to receive a salary or other income during the second year of the leave which was previously prohibited. In addition, the new rules set a maximum of 100 % of the compensated salary in case the person is entitled to parental leave or maternity/paternity leave with regard to several children.

In order to qualify for parental leave the employee will usually have a state social insurance record (being insured) of 12 months during the last 24 consecutive months. Some exceptions apply to persons under 26 if they have been engaged in full-time study or state education programmes,³⁵² if the break between studies and employment is not longer than 3 months and the persons were insured directly by the state. Today, the average monthly allowance is around EUR 340 (LTL 1 170 LTL) compared with the average monthly salary of EUR 695 (LTL 2 400).

Persons on parental leave remain covered by state social security schemes on the ground of their undissolved contract of employment.

8. Return to work (Clause 6)

The employee shall return to work upon the expiry of the term of leave. If he or she does not comply with this provision, he or she can be dismissed without notice.³⁵³

Workers returning from parental leave are not entitled to a right to request changes to their working hours and/or patterns for a set period of time. This is not in conformity with Clause 5(1) of the Framework Agreement on Parental leave. However, Lithuanian law provides for additional guarantees and rights to those workers having family obligations:

- 1) Additional paid leave. Additional paid leave of one day per month (or their weekly working time shall be reduced by two hours) for employees raising a child with disabilities until the child reaches the age of 18 or two children before they reach the age of 12, and in case of three or more children under 12 years – 2 additional days of rest per month (or their weekly working time shall be reduced by four hours). Employees who are not entitled

³⁴⁹ Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees OJ L 294 of 10 November 2001, pp. 22-32.

³⁵⁰ Council Directive 2003/72/EC of 22 July 2003 supplementing the Statute for a European Cooperative Society with regard to the involvement of employees OJ L 207 of 18 August 2003, pp. 25-36.

³⁵¹ State Gazette, 2000, No. 111-3574.

³⁵² There is also active campaigning by doctoral students who consider that the age limit of 26 is too low for them because of the late completion of their doctoral studies, thereby reducing their opportunity to engage in active employment and to have the necessary state social insurance record.

³⁵³ Ruling of the Klaipeda regional administrative court of 16 April 2013 in case No. I-476-386/2013.

- to additional paid leave and are raising a child who is in primary school until the child reaches the age of 12 are allowed to take an additional half-day rest on the first day back at school (on September 1).
- 2) Prolonged minimum annual leave. The prolonged minimum annual leave of 35 calendar days (whilst the normal minimum leave is 28 calendar days) is granted to employees who, as single parents, are raising a child before that child has reached the age of 14 or a disabled child before that child has reached the age of 18.
 - 3) Additional unpaid leave. The additional unpaid leave shall be granted at the request: a) of employees raising a child under 14 years of age – for up to 14 calendar days; b) of employees raising a child with disabilities under 18 years – for up to 30 calendar days; c) of the father during the maternity leave and the parental leave of the mother as well as to the mother – during the parental leave of the father – for up to 3 months.

In addition, in certain cases the law provides the right to choose the exact time of the annual leave. Pregnant women and employees raising a child alone before that child has reached the age of 14 or a child with disabilities before that child has reached the age of 18 have the right to choose the exact time of their annual leave after six months of uninterrupted work at an enterprise.

Part-time work is subject to an agreement between the parties to the contract. However, part-time work shall be granted at the unilateral request of a pregnant woman, a mother who breastfeeds, a woman who has recently given birth and raises a child until it reaches the age of one year, an employee raising a child until it reaches three years of age or an employee who, as a single parent, is raising a child until it has reached the age of 14 or a child with disabilities until it has reached the age of 18. The employer has no right to refuse to grant part-time work.

9. Time off from work on grounds of force majeure (Clause 7)

If a family member of an employee has become ill and the health care institution establishes a need for care, the employee is given time off which is paid by the State Social Insurance Fund. In this case the time off is regulated in the same manner as in the case of the employee's own illness. In accordance with Section 10 of the Law on Sickness and Maternity Social Security, the sickness allowance amounting to 85 % of the employee's compensated salary is paid for the first 7 days. In the case of a child becoming ill before he or she has reached the age of 14 the limit of the leave is extended up to 14 days. In the case of the in-patient care at home or in hospital of a child under 7 years of age or a child under 14 years who has a very serious illness – the leave is extended up to 120 days in any 12-month period.

10. Final provisions (Clause 8)

Traditionally Lithuanian labour law is heavily loaded with family-friendly provisions allowing for a balance between work and family obligations. However, the principle of the prohibition of less favourable treatment is lacking. In fact, employees on parental leave may suffer from 'stagnating' working conditions when the remuneration or other conditions are improved at an enterprise in general, because the employer has no obligation to change the working conditions of those on parental leave. As it was reported by the Equal Opportunities Ombudsperson, there have even been cases in the state higher education system where the period of parental leave was not exempted from the period of work in the process of performance evaluation. With the introduction of the possibility to transfer part of the social pension insurance contributions to a private pension scheme (combined with the state social security scheme) employees on parental leave have started to suffer from less favourable treatment with regard to state social security – they are not participating in state-supported funded pension schemes for the period of parental leave. The reason for this is simple – during parental leave an employee does not receive a salary but a social allowance, so his/her contributions to private pension schemes are not transferred.

11. Sanctions (Article 2)

In Lithuania there is no specific system of sanctions in case of a violation of the rules on parental leave. The employee can consider all the legal remedies which are intended to defend his or her rights. He/she has a right to initiate litigation before the Commission on Labour Disputes under the State Labour Inspectorate or to address the courts. The Commission or the court may confirm the right and award material and pecuniary damages to be paid with no limitation. In addition, the employee may submit a complaint to the Equal Opportunities Ombudsperson if the violation of his/her duties may amount to sex discrimination.

12. Case law

There are relatively few cases related to parental leave in Lithuania. Some of them have concerned the dismissal of an employee on parental leave. In principle, the courts are clearly positioning themselves on the side of employees, thereby protecting their right not to be dismissed and to receive the social allowance during paternity leave. Under the pertinent legislation, the state social allowance will no longer be paid if the employee's parental leave has terminated (e.g. if he or she has been dismissed), therefore the existence of an employment relationship becomes the focal point in qualifying for an allowance. In the famous "Teniso pasaulis" case the court even held that the female head of the company on parental leave could not be dismissed despite the fact that the supervisory board had discharged her from her duties. The court underlined the necessity of preserving the right of an employee to have the payment of the state social allowance maintained and it prohibited her dismissal from work.³⁵⁴

As was already indicated above, there have been several cases with regard to the conditions of workers returning after parental leave. On one occasion the court has underlined that the right to preserve the working conditions after parental leave should be interpreted just like in the case of maternity leave.³⁵⁵ However, in another case the court has ruled that the law shall guarantee the employee the right to return not to the same, but to an 'equal' position in the enterprise.³⁵⁶

13. Practice and other relevant issues

Parental leave is a very popular phenomenon in Lithuania and in most cases it is used by women and to its fullest extent (which means up to when the child reaches the age of three years). Only recent reforms related to the state social allowance have started to encourage employees to return to work sooner. A survey by the Institute of Demographic Research has established that families tend to take the longest possible period of parental leave (42 % of women have had a 2-year parental leave and 36 % have taken longer than 2 years). Only 2 % of all parents were using parental leave of less than 2 years. In other words, 8 out of 10 Lithuanian parents are taking very long parental leave.

The popularity of a long parental leave and the domination of women among those taking parental leave reflects the public perception of the role of women within the family and in society. Obviously, Lithuanians prefer the family model under which a woman leaves work for a long period and assumes primary responsibility for the children. It is not positive policy measures (they are non-existent in Lithuania) but rather the modern economic reality that dictates that more and more men are now taking parental leave. The number of men taking parental leave is constantly increasing: in 2005 male recipients of the state social allowance made up only 1.2 % of the total,³⁵⁷ whilst in 2012 their number had reached 7.5 % and with a

³⁵⁴ Ruling of the Supreme Court of 11 October 2011 in case No. 3K-3-384/2011.

³⁵⁵ Vilnius regional court ruling of 27 May 2013 in case No. 2A-256-262/2013.

³⁵⁶ Vilnius regional court ruling of 31 May 2013 in case No. 2A-2282-611/2013.

³⁵⁷ Vyrai ir vaiko priežiūros atsotogos. Available in internet under www.lygybe.lt, accessed on 20 April 2014.

record high of 11.5 % already by 2013.³⁵⁸ The significant increase in numbers can be explained by popular active public campaigning. There is also the opinion that the number of male parents on parental leave is also associated with crisis-related tensions on the labour market.

It is interesting to note that 67 % of respondents confirmed a return to their previous position after parental leave. Another 20 % found a different job while 13 % did not return to the labour market. The study also revealed that a return to the labour market significantly depends on the sector of activity. The vast majority of those who worked in the public sector (90 %) returned to the same job. A different situation was observed in the private sector where only 52 % returned to the same job. It is obvious that working in the private and public sector is different for women. Job insecurity, the neglecting of social rights and fewer possibilities to reconcile work and family life are making work in the private sector less attractive.

LUXEMBOURG – Anik Raskin

1. Context

The protection of pregnant workers and workers who have recently given birth or are breastfeeding was reformed by the Law of 1 August 2001.³⁵⁹

According to this Law, pregnant workers cannot be required to work during eight weeks preceding the expected date of confinement. Workers also cannot be required to work during eight weeks following childbirth. The total maternity leave can exceed sixteen weeks however. This is for example the case when the birth takes place after the envisaged date. Maternity leave is paid in the same manner as sick leave.

Workers are entitled to two 45-minute breaks per working day if they are breastfeeding after maternity leave.

Paternity leave is a short period of mandatory leave for fathers.³⁶⁰ The duration of the leave granted to male employees for the birth of a legitimate or a legally recognised child born out of marriage is two days. It is part of the so-called ‘leaves for personal reasons’ and has the same effect as the normal annual leave, which means that it is paid.

In case of adoption of a child under the age of sixteen, the employee has an unconditional right to two days of leave (similar to the paternity leave).³⁶¹ If the adopted child is under the age at which it is admitted to the first year of primary school, the adoption leave is extended to eight weeks for a single adoption and twelve weeks for a multiple adoption.³⁶² The leave cannot be refused by the employer but must be requested. The leave is subject to presentation of the adoption order issued by the court. Only one of the adoptive parents is entitled to take the adoption leave. However, both of the adoptive parents are entitled to take parental leave. Single adoptive parents are entitled to adoption leave on the condition that the adopted child has not already lived together with him/her before the adoption.³⁶³

Workers are entitled to leave for family reasons in order to stay with her/his sick child. The maximum duration of the leave is two days per year and per child.

Parental leave was introduced by law in 1999.³⁶⁴ According to the Law, workers who have worked in Luxembourg for at least twelve months at the time of the birth of the child are

³⁵⁸ ‘Shocking results: half of women following maternity leave to work in the private sector, do not return’, available at: <http://www.delfi.lt/news/daily/lithuania/sokiruojantys-rezultatai-puse-moteru-po-motinystes-i-darba-privaciame-sektoriuje-nebegrizta.d?id=63224646>, accessed 20 April 2014.

³⁵⁹ <http://www.legilux.public.lu/leg/a/archives/2001/0102/a102.pdf#page=2>, accessed 2 June 2013.

³⁶⁰ Labour Code (*Code du Travail*), Article L.233-16.-1.

³⁶¹ Labour Code, Article L.233-16.-6.

³⁶² Labour Code, Article L.234-55 (1)

³⁶³ Labour Code, Article L.234-55 (2)

³⁶⁴ Labour Code Articles L.234-43 – L.234-49.

entitled to paid parental leave which may be taken part time for one year or full time for six months.

Parental leave is an individual right and cannot be transferred from one working parent to the other. The monthly overall parental allowance is paid by the State.

Workers who do not fulfil the condition of duration of work in order to be entitled to paid parental leave are, now, entitled to a non-paid parental leave of four months.

Parental leave and adoption leave are separate categories of leave. Adoptive parents, in the same manner as biological parents, are entitled to parental leave.

Parental leave was introduced by law in 1999.³⁶⁵ It was then mainly presented as a measure to combat unemployment. The idea was that the parent on parental leave would be replaced, for the duration of the leave, by a person in unemployment. This did not work. Many employers did not replace the worker on leave. Now, parental leave is rather presented as a measure to facilitate the reconciliation between private and professional life. Maternity leave is not a leave that fits into the frame of reconciliation. It is a leave that is meant to protect the health of the pregnant worker. Paternity leave is meant to allow the father to take care of the administrative obligations in relation with the birth of a child.

2. Implementation of Directive 2010/18

Directive 2010/18 was implemented by a law of 19 June 2013.³⁶⁶ As the social partners did not issue an opinion on the implementation of the Directive, the Government decided to adapt the legislation in order to comply with the Directive without such opinion.

This new law prolongs the unpaid parental leave from 3 to 4 months. It also implements Clause 6(1) by introducing a right for the worker to request changes to her/his working hours and/or patterns for workers when they return from parental leave. Employers have to give a response taking into account the employer's and the worker's needs. A rejection must be justified by the employer. In case of a positive reply the period of this change is limited to one year at most.

No tables illustrating the correlation between the Directive and transposition measures have been published.

3. Purpose and scope (Clause 1)

National legislation is applicable to both the public and the private sector.

The scope of the national transposing legislation includes part-time workers if their working time is at least half of the legal full-time working time, which is 40 hours per week. It also includes fixed-term contracts if their duration is included in the period of the parental leave. Employment in temporary agencies is covered by the same condition.

4. Parental leave (Clause 2)

Paid full-time parental leave is six months. Paid part-time parental leave is twelve months. Unpaid parental leave is four months. There is no difference in the duration of parental leave in the public sector and in the private sector.

One parent has to take her/his parental leave immediately after the maternity or the adoption leave. The second parental leave can be taken until the child has reached the age of five.

Parental leave is an individual right. There is no possibility for one parent to transfer all or part of her/his parental leave to the other parent.

Surrogacy is not mentioned by national law and there is no case law on this issue.

³⁶⁵ Labour Code Articles L.234-43 – L.234-49.

³⁶⁶ See: http://www.chd.lu/wps/PA_RoleEtendu/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/140/213/123192.pdf, accessed 5 April 2014.

5. Modalities of application (Clause 3)

There are two types of paid parental leave. Full-time parental leave is six months and cannot be refused by the employer. Part-time parental leave is twelve months and relies on the employer's agreement.

For the first parental leave, the worker has to submit an application to the employer at the latest two months before the start of the maternity or adoption leave. It has to be taken immediately after the maternity/adoption leave. For the second parental leave the delay for application is six months before the worker intends to take the parental leave.

Workers who have worked in Luxembourg for at least twelve months at the time of the birth of the child are entitled to paid parental leave. In case of successive fixed-term contracts the sum of the contracts is taken into account for the purpose of calculating the qualifying period.

The employer can neither refuse nor postpone the parental leave. However, she/he can refuse to grant part-time leave. The law does not impose any obligation on the employer to justify the refusal. In this case, the worker must take full-time leave or renounce her/his leave.

Regarding the second parental leave, the employer can request that the leave is postponed for a maximum of two months. The criteria are the impact of the leave on business operations as a result of simultaneous applications by more workers, the specific nature of the work of the worker which makes it difficult to replace her/him or if the worker is a senior manager and effectively participates in the management of the business. The employer can request that the leave is postponed for a maximum period of six months if the business employs fewer than fifteen workers.

There are no special rules/exceptional conditions for access and modalities of application of parental leave to meet the needs of parents of children with a disability or a long-term illness.

6. Adoption (Clause 4)

There are no additional measures to address regarding the needs of adoptive parents.

7. Employment rights and non-discrimination (Clause 5)

The dismissal of workers when on parental leave is prohibited. The protected period starts two months before maternity leave for the first parental leave and six months before the leave for the second parental leave. Workers have the right to return to the same job or, if this is not possible, to an equivalent or similar job when they return from parental leave.

Acquired rights as well as rights in the process of being acquired on the date on which parental leave starts are maintained as they stand until the end of the parental leave. The worker is entitled to reinstatement or, in the event that this is impossible, similar work corresponding to his/her qualifications must be provided with equivalent remuneration.

Throughout parental leave, employment relationships are suspended. The allowance is paid by the State and there is continuity of the entitlements to social security cover under all of the different schemes. The gross monthly amount paid by the State is EUR 1 778.31 (March 2014) for a full-time parental leave. As is true for salaries, this allowance is subject to social security contributions, and parental leave counts as a worked period towards all social security schemes

8. Return to work (Clause 6)

Workers returning from parental leave have the right to request changes to their working hours and/or patterns. Employers have to give a response taking into account the employer's and the worker's needs. Employers can refuse the requested changes. In case of a positive reply the period of this change is limited to one year at most.

There are no mechanisms to promote/ensure that workers and employers maintain contact during the period of leave and make arrangements for any appropriate reintegration measures.

9. Time off from work on grounds of force majeure (Clause 7)

Leave for family reasons may be taken by a worker who needs to stay with her/his sick child. The maximum duration of the leave is two days per year and per child. The worker must inform her/his employer at the latest on the first day of his absence. This leave is in addition to legal paid annual leave and has the same effects regarding salary and social contributions.

10. Final provisions (Clause 8)

All the minimum requirements of the Directive have been implemented.

The fact that parental leave is a paid leave, even if restricted by certain conditions, is more favourable than the minimum requirements of the Directive. However, due to the fixed allowance, parental leave seems to be less attractive for fathers than for mothers. Men are still the ‘breadwinners’ in Luxembourg and their salaries are usually higher than women’s salaries (also due to part-time female work). Families do not want to lose the highest salary they earn.

11. Sanctions (Article 2)

For the duration of the parental leave, the worker is protected against any form of dismissal with notice. A dismissal with notice during this period is considered as invalid. The worker may be entitled to damages that will be fixed by the court. The law does not provide any details, and refers only to the possibility to go to court. The law does not fix any fines.

At the end of parental leave, the worker must return to work. She/he can only resign after returning to work. Failure to return to work after the parental leave may constitute a reason for dismissal with immediate effect for serious misconduct.

12. Case law

The Supreme Court of Justice stated that if the employer proves that it is impossible to reinstate the worker in his/her original job, they can propose other work, even if this is of a different kind.³⁶⁷ In the case at hand, the worker concerned had refused the proposed new job in particular because of less favourable career expectations, which was not proved. The contested dismissal was declared valid.

In another case concerning a dismissal, the Supreme Court of Justice held³⁶⁸ that the prohibition of dismissal did not exclude a dismissal due to the reorganisation of the company involving the removal of the workplace where the employee worked before his parental leave. After the period of protection during parental leave, a dismissal due to these reasons remains valid. The worker in question had been dismissed on the day after her parental leave ended.

13. Practice and other relevant issues

Although intended for both female and male workers, parental leave is in practice a female leave. In 2013, 2 859 female workers and 141 male workers took full-time parental leave. During the same period, part-time parental leave was taken by 169 female workers and by 908 male workers. As men earn higher salaries, they are more inclined to take part-time parental leave than women. Furthermore, part-time parental leave allows the parent to stay in touch with their workplace, and does not harm career development as much as full-time parental leave.

³⁶⁷ Judgment C.S.J. 30 July 2007 No. 31422.

³⁶⁸ Judgment C.S.J. 12 June 2007 No. 32095.

FORMER YUGOSLAV REPUBLIC OF MACEDONIA – Mirjana Najchevska**1. Context**

The Former Yugoslav Republic of Macedonia has developed a complex family policy, providing childcare services, universal child benefits and various leaves for family reasons in order to facilitate the reconciliation of work, private and family life. The Labour Law includes leaves on the following grounds: pregnancy; birth; parenthood; and care and nursing of children. During pregnancy and parenthood employees are entitled to specific protection (Article 161 Labour Law).

There are no major differences between employees in the private sector and public servants. Women are entitled to a maternity leave of 9 months. At least 28 days must be taken before the birth. Maternity leave is longer for multiple births (1 year). If the child needs intensive medical care and the mother or the father is back at work, this means that the leave for childbirth and parenthood is terminated and they have the right to use the unused part. The Labour Law includes a general Article 161, according to which ‘Workers are entitled to special protection in employment for pregnancy and parenthood. The employer is obliged for workers to allow reconciliation of family and professional obligations’.

After the birth or adoption of a child, the father can use the same leave as the mother if the mother does not use it (Article 167 Labour Law). Employed fathers enjoy seven days of paid leave for the birth of their child. Adoption leave is until the child is nine months old; if more children (two or more) are adopted, until they are one year old (Article 165 Labour Code).

With the most recent changes of the Labour Law in 2013, unpaid parental leave was introduced. Parental leave is an individual right for the employed mother, to be taken after the maternity or adoption leave. This is unpaid leave of a total duration of three months that can be used until the child reaches the age of three.³⁶⁹

Every employee is also eligible for paid leave to care for a sick child under the age of three, or any member of their close family older than three.³⁷⁰ However, legally, periods of paid leave for the latter cannot exceed 30 days.

In cases of serious disability or illness of a child under eighteen, every employee is entitled to work part time to take care of the child if the child is not placed in an institution for social care and healthcare. In this case part-time work is treated as full-time work with full pay.

Employees who need to take care of a sick child under the age of three are entitled to leave and payment according to the Law on Health Insurance (Article 13 of the Law on Health Insurance).

The employer may not require work longer than full-time work for female workers, in accordance with the provisions for the protection of pregnancy, birth and parenthood; for mothers of a child under three; and for single parents with a child under six, unless the employee provides a written statement that he/she voluntarily agrees to work overtime.³⁷¹ The employer may not require night work for working women with a child younger than one. If the child is older than one and younger than three, women could work night shifts with their previous written agreement. The same conditions apply for fathers if the mother has died or is ill.

There is a general ban on dismissal from work on the basis of pregnancy, maternity, paternity, parental, adoption, childcare and care leaves.³⁷² In addition, pregnant women or parents with a child under seven (or a child under fifteen, for single parents) could reject work abroad

³⁶⁹ Article 170(a) Labour Law.

³⁷⁰ Article 13 Law on Health Insurance, 2002, most recent amendment 2014.

³⁷¹ Article 120 Labour Law, 2010, most recent amendment 2013.

³⁷² Article 101 Labour Law, 2010, most recent amendment 2013.

2. Implementation of Directive 2010/18

Until now, Directive 2010/18 has not been mentioned in the legislation of the Republic of Macedonia and no implementation is foreseen in the National Action Plan for the period 2014-2016. The provisions that deal with parental leave are not presented as an implementation of the Directive. Macedonian legislation does not conform to the main obligations of the Directive and some of the clauses of the Directive do not have any corresponding provision in the Former Yugoslav Republic of Macedonia. This is the case, for example, for Clause 1 of the Directive ‘This agreement applies to all workers, men and women...’, or Clause 2 ‘The leave shall be granted for at least a period of four months’.

The phrase ‘balancing of private and public life’ is mentioned in the most important legislation (the Labour Law) as well as in the Strategy on Gender Equality 2013-2020. In the same Strategy it is said that ‘Introducing measures to balance the private and public life would be significant, primarily through the introduction of flexi-safe (in Macedonian ‘*флексицигурни*’) placements and promoting part-time work combined with the division of responsibilities in the family for the care of children and elderly dependents and parallel with introduction of parental leave following the western countries’ example’. However, in different articles (even in different paragraphs of same article) dealing with paid and unpaid leave the female grammatical form ‘*работничка*’ (female worker) is used in relation to parental leave and parental rights. This means that in practice parental leave is only granted to the mother.³⁷³

The relevant provisions are included in the Labour Law and the Law on Health Insurance.

The expert is not aware of any publication of tables to illustrate the correlation between the Directive and transposition measures.

3. Purpose and scope (Clause 1)

National legislation is applicable to both the public and the private sector.

The scope of the national transposing legislation includes contracts of employment or employment relationships related to part-time workers, fixed-term contract workers or persons with a contract of employment or employment relationship with a temporary agency. This can be derived from Article 9(b) of the Labour Law: ‘all forms of discrimination against workers because of pregnancy, childbirth and parenting, irrespective of the duration and type of employment are prohibited if the work relationship is established according to the law’.

Unpaid leave could be used (at the parent’s request) in up to three different time periods.

4. Parental leave (Clause 2)

The duration of parental leave is the same in the public and in the private sector, as well as for adoption.

In cases of serious disability or illness of a child under eighteen, every employee is entitled to work part time to take care of the child if the child is not placed in an institution for social care and healthcare. In this case part-time work is treated as full-time work.

The right to parental leave is individual and can be exercised by either of the parents (after the birth of a child). However, fathers can use the leave only if the mother does not use it.

For unpaid leave this is unclear, as the wording of the relevant article of law only refers to the mother, but the title is ‘parental leave’.³⁷⁴

Surrogacy is not mentioned in Macedonian legislation.

³⁷³ The Network for Protection from Discrimination responded as follows: <http://www.soros.org.mk/mk/Home/NewsAndActivity?newsID=745&catID=7>, accessed 6 April 2014.

³⁷⁴ Article 167, Labour Law, 2010, most recent amendment 2013.

5. Modalities of application (Clause 3)

The parent is obliged to announce the starting and end dates of the parental leave to their employer thirty days before the leave starts or ends (for paid or unpaid leave).

The length of service requirement in order to benefit from parental leave is six months before the birth of a child.

In case of successive fixed-term contracts with the same employer (as defined in Council Directive 1999/70/EC on fixed-term work³⁷⁵), the sum of these contracts is taken into account for the purpose of calculating the qualifying period.

Macedonian legislation does not mention the possibility of allowing parental leave to be postponed for justifiable reasons related to the operation of the organisation. In addition, there are no special arrangements for small firms.

There are special rules/exceptional conditions for access and modalities of application of parental leave to the needs of parents of children with a disability or a long-term illness. Article 169 of the Labour Law states: ‘A parent of a child (until 18 years of age) with developmental disabilities and special needs have the right to work half of full-time if both parents are employed or if it is a single parent... part-time work shall be considered as full-time, and the right to compensation of salary will be paid on the basis of legislation for Social Security’.

6. Adoption (Clause 4)

Parental leave can be taken after adoption leave. The only specificity regards the age of the child when adopted. If the adopted child is older than nine months, there is a period of ‘accommodation’ that should not be less than two months and more than three months.

7. Employment rights and non-discrimination (Clause 5)

During parental leave, the employment contract is suspended with very strong protection against dismissal. Article 77 of the Labour Law, entitled ‘Unfounded Reasons for Dismissal’, stipulates that the worker must not be dismissed while on approved leave for pregnancy, birth, parenthood, including unpaid parental leave. After parental leave the worker has the right to return to the same job or, if that is not possible, to an equivalent or similar job consistent with their employment contract (Labour Law, Article 166).

The rights acquired or in the process of being acquired by the worker on the date on which parental leave starts are the minimum to be maintained as they stand until the end of the parental leave. During unpaid leave the worker retains his/her working rights (‘*мирување*’).³⁷⁶ This also applies to the status of the employment contract or employment relationship for the period of the parental leave.

Entitlements, including paying premiums to social security covered under the different schemes, in particular healthcare, are continued during the period of parental leave as if the worker works.

Paid parental leave is remunerated by the social security institutions through the state budget. However, if the female worker decides to stop her paid parental leave 45 days after the birth of the child, she is entitled not only to her full salary paid by the employer, but also to 50 % of the so-called salary compensation (i.e. allowance) paid by social security.³⁷⁷ This right is not transferable from the mother to the father. Social security provides an allowance for all sectors to cover parental leave at the level of the personal average salary of the previous twelve months (or at least the previous six months), but not higher than four times the average salary at the national level.

³⁷⁵ Council Directive of 28 June 1999 concerning the Framework Agreement on fixed-term work concluded by ETUC, UNICE and CEEP, OJ L 175 of 10 July 1999, pp. 43-48.

³⁷⁶ Article 147 Labour Law.

³⁷⁷ Article 166 Labour Law.

The additional, unpaid parental leave of three months is not necessarily linked to the period immediately after the birth, and can be enjoyed until the child reaches the age of three. For this three months unpaid leave, the Ministry of Health pays the premiums for the health insurance, while all other premiums are not paid.

8. Return to work (Clause 6)

Workers returning from parental leave can request changes to their working hours and/or patterns until their child reaches the age of three only if there are medical problems or situations. Employers are obliged to follow medical findings. Otherwise, the Labour Law only prohibits employers to oblige these workers to work overtime or to temporarily change their working position according to business necessities (Articles 120 and 124). There are no mechanisms to promote/ensure that workers and employers maintain contact during the period of leave and make arrangements for any appropriate reintegration measures. However, there is a general clause in Article 161 of the Labour Law stipulating that the employer, in relation to pregnancy or parenthood, is supposed to enable workers to harmonise their professional and family obligations, as well as to allow one hour extra break for mothers breastfeeding their child until it reaches the age of one.

9. Time off from work on grounds of force majeure (Clause 7)

This clause has not been implemented at national level and there are no specific provisions or clauses relating pregnant workers or working parents to an entitlement to time off from work on grounds of force majeure for urgent family reasons in case of sickness or accident. Yet, this applies to all workers. However, a paid leave is recognised in case of sickness of a child. Every employee is eligible for paid leave to care for a sick child under the age of three. For other members of the close family (all older than three) this paid leave is available for 30 days per year.

10. Final provisions (Clause 8)

Macedonian parental leave is much longer than the one provided by the Directive, as it can last nine months (as paid leave) and an additional three months (as unpaid leave). Moreover, this is an unrestricted right and the social security systems provide for an allowance for parents to be able to take this parental leave. The job is secure during the parental leave. Also, if the parent decides to cut off the leave early, she/he will receive 50 % of the payment for parental leave in addition to the regular salary.

However, some very essential issues of the Directive have not been implemented, such as: the non-transferable character of at least part of the parental leave, and parental leave granted to the father as an individual right.

Some of the detrimental effects of the parental leave scheme have been demonstrated. An extended leave, especially for unskilled women, could have a negative impact on women's careers and earnings profiles (it could especially reflect on future pension amounts).

Another problem is the confusion in terminology (the general title covering parental leave includes articles that are clearly related only to maternity leave, or the female grammar form is used in articles explaining rights of both parents). This has led to a growing debate in the Former Yugoslav Republic of Macedonia about the actual concept and precise terminology along the lines of the EU Directive.

More favourable provisions are related to care infrastructure, care facilities and accessibility of childcare for all working parents as an extremely important issue in the reconciliation of family and working life. The Law on Protection of the Child regulates the system and organisation for protection of children.³⁷⁸ According to this Law 'State and local governments are to provide adequate financial assistance to parents for support, awareness,

³⁷⁸ Official Gazette of Republic of Macedonia No. 23/2013.

care and protection of children and organising and ensuring the development of facilities and services for the protection of children' (Article 2). Institutions for the care and education of children in kindergartens and centres for early childhood development can be public (state, municipal, and municipality in Skopje) and private. The Macedonian system incorporates state subsidies for kindergartens which enable parents to divide the tasks related to their children, thus enabling mothers to balance their professional and family duties. In spite of the very high subsidies, which keep the price quite low (starting at about EUR 25 per child per month), the current economic conditions have resulted in only 11 % of the children of the relevant age going to kindergartens. There is only a small number of private kindergartens (which are not subsidised); they work on a commercial basis, but there are no data on the number of children they take care of. However, it is very obvious that in these cases the burden of bringing up children is more jointly carried by the parents than in the cases where the traditional system is applied. An additional form of child-care is day care in schools for children from the first to the fourth grade of elementary education.

11. Sanctions (Article 2)

National legislation does not provide for effective, dissuasive and proportional sanctions for violations of the rules provided by the Directive. In the three categories of misdemeanours envisaged in the Labour Law, the strictest stipulates a fine of EUR 6 000 to 7 000, while the most lenient category of fines is EUR 500 to 1 000; the general clause sanctioning all the categories of violations in the area of specific protection, including pregnancy and parenthood, are fines of between EUR 2 000 and EUR 3 000. Of course, this does not exclude legal remedies in the sphere of litigation before a court of law.

Employers cannot dismiss a worker on parental leave. According to Article 77 of the Labour Law ungrounded reasons for terminating the contract of employment are 'approved leave due to illness or injury, pregnancy, birth and parenting, care of family members and unpaid parental leave'. The same treatment applies if at the end of the parental leave the worker is not given an equivalent or similar job.

12. Case law

In the case of Ms AJ, the Appellate Court of Bitola, confirming the verdict of the Basic Court in Prilep, decided that the employer's duties towards a pregnant worker automatically expired at the end of the period of her fixed-term contract (31 August 2009).³⁷⁹ Since the worker started her pregnancy leave on 20 July 2009, the employer paid all remunerations to her and to the social and healthcare security institution only for that period of one month and ten days. The employer then informed the competent institutions that she was no longer employed, which was reason for the social security institution to stop paying her wage compensation (i.e. allowance) on 31 August 2009. Since the Court did not address the issue of whether the pregnancy was the motivation for not extending the fixed-term contract, it is doubtful whether this case is not contrary to the case law of the CJEU, establishing that the non-extension of fixed-term contracts because of pregnancy and maternity constitutes direct sex discrimination contrary to EU gender equality law. However, the very avoidance of the issue of not extending the fixed-term contract indicates that exactly the non-renewal of the fixed-term contract might have been motivated by the worker's pregnancy.³⁸⁰

13. Practice and other relevant issues

In the Former Yugoslav Republic of Macedonia, parental leave is widely used and is mostly taken by the mother. There are no sufficient data on this issue; however, there are some media

³⁷⁹ Available at: <http://www.asbitola.mk/Odluki.aspx?odluka=5318>, accessed 6 April 2014.

³⁸⁰ As in the *Melgar* case where the Court established that the contract was not renewed because of the state of pregnancy: Case C-438/00 *Maria Luisa Jiménez Melgar v Ayuntamiento de Los Barrios* [2001] ECR I-06915.

analyses based on information delivered by Ministry of Labour and Social Care which show that fathers do not use the possibility very often.³⁸¹ According to this information, only 20 men per year use all or part of parental leave.

The study entitled ‘Demographic policies and gender equality Macedonia: Measures to promote equality between women and men as measures to boost birth rate’³⁸² states that the ‘increased role of women in early childcare is also one of the key factors affecting the increase in fertility’. As many as 55.2 % of those interviewed in this research think that men will agree to use parental leave if there is support from the community and employers. Yet, 28 % think that it is shameful for fathers to use parental leave. Fathers in our country would be willing to take parental leave to take care of their new-born children if this were greeted with understanding from the community and in particular from their employers.

There are no positive action measures at national level to promote a more balanced share of family responsibilities between both parents in relation to these leaves. On the contrary, there is a visible development in the direction of the mother giving the care instead of the father or both parents jointly.

Some years ago, the Macedonian system was more flexible, allowing a combination of periods of full-time leave and part-time parental leave. At the moment, the system is more rigid, and does not allow part-time leave, except for children with a disability. These changes are part of a general development of more restrictive labour legislation in the past eight years.

MALTA – Peter Xuereb

1. Context

Maltese law makes provision for all the different types of leave and seeks to dovetail them in the manner indicated by relevant EU legislation. The period of maternity leave was increased in two stages from fourteen weeks to what is now a period of eighteen weeks, in place as from January 2013. The rights are to be found in the Employment and Industrial Relations Act of 2002 and in Regulations made thereunder, namely the Parental Leave (Entitlement) Regulations 2003.³⁸³

The Parental Leave Entitlement Regulations speak of ‘parental leave on the grounds of birth, adoption, fostering or legal custody of a child’ (Regulation 4(1)), so that no distinction is made between the different possible reasons, as set out, for the claim of ‘parental’ leave. In all cases, it is ‘parental leave’. Otherwise, the leave is distinct from other leaves, such as maternity leave.

Regulation 9(2) provides that ‘during the period of parental leave, an employee shall not, upon the resumption of duties at the workplace, be entitled to any other leave, bonuses or allowances and shall not avail himself of such entitlement which might have accrued during such period’.

There is a public/private sector anomaly, with twelve months available to public-sector employees while a maximum of four months is statutorily available to private-sector employees. Parental leave under Statute is a four-month period of leave given to a parent in order to enable that parent to personally care for a child below the age of eight. It is separate from other leaves. According to the Public Service Management Code, which relates to public-sector employees, employees who have served for twelve months are permitted up to twelve months unpaid parental leave. Those female employees who immediately prior to the utilisation of parental leave avail themselves of the paid maternity leave entitlement, are required to put in six months of service if they wish to run parental leave after maternity

³⁸¹ See: <http://www.vecer.com.mk/default.asp?ItemID=37E0200A35CBE5468B7B313BF60EC5AC&m=0>, accessed 6 April 2014.

³⁸² See: <http://www.reactor.org.mk/CMS/Files/Publications/Documents/%D0%9F%D1%80%D0%B5%D0%B4%D0%BB%D0%BE%D0%B3%20%D0%BC%D0%B5%D1%80%D0%BA%D0%B8%20%D0%9C%D0%A2%D0%A1%D0%9F-8-11-12.pdf>, accessed 6 April 2014.

³⁸³ Legal Notice 225 of 2003 as amended.

leave. The six months of service must be worked in one aggregate period, either immediately before or immediately after the utilisation of the parental leave or the five-year unpaid career break to which parents or legal guardians are entitled under the Public Service Management Code.³⁸⁴

2. Implementation of Directive 2010/18

The Parental Leave Directive was implemented in Malta by way of amendment of the Parental Leave (Entitlement) Regulations 2003, which amendments came into force on 8 March 2012. This was done by the Parental Leave Entitlement (Amendment) Regulations of 2011,³⁸⁵ passed under powers given by the principal Act, namely the Employment and Industrial Relations Act 2002.³⁸⁶

No correlation table has been made public.

3. Purpose and scope (Clause 1)

The Parental Leave Regulations (henceforth ‘the Regulations’) were made applicable to ‘service with Government’ by the Extension of Applicability to Service with Government (Parental Leave Entitlement Regulations and Urgent Family Leave Regulations) Regulations of 2007.³⁸⁷ Public bodies are exhorted to follow the example of the Government as an employer, and the Public Service Management Code applies somewhat more favourable conditions on adoption leave to all public-sector employees.³⁸⁸

The Regulations are stated to apply to all employees, whether full-time or part-time, and whether they are employed on an indefinite or a fixed-term contract, provided that the employee has been in the employment of the same employer for a continuous period of at least twelve months. In the case of an employee on a fixed-term contract, in calculating this twelve-month period the sum of successive fixed-term contracts is to be taken into account, as is the period between the renewal of a fixed-term contract before termination and any following new contract.³⁸⁹ Since the law applies to ‘all employees’ it can be presumed that agency workers are also covered, but in the absence of case-law to this effect it is not possible to be categorical.

4. Parental leave (Clause 2)

The duration of statutory parental leave, which is unpaid, is four months. The period was previously three months and this was revised with the entry into force of the legislation (the Regulations) transposing the Directive. In addition, for public-service employees, the period of so-called adoption leave (referred to separately in this case in the Public Service Management Code) is fourteen weeks paid with another four weeks unpaid except for an allowance equivalent to maternity allowance under the social security legislation (18 weeks in total). Public-service employees may also take one full year of parental leave unpaid.³⁹⁰ The difference between the so-called adoption leave and the parental leave, both of which are available to public service employees in terms of the PSMC, is that the adoption leave is paid, while the parental leave is unpaid. The adoption leave commences on the day that the child passes into the care and custody of the adoptive parents. However, one week may be utilised for travel in connection with the final court session for the award of the adoption decree, in

³⁸⁴ A career break can be taken for five years, unpaid, to look after a child under eight. At the end, paid employment is resumed. Paragraph 5.3.3.5 of the Public Service Management Code, available at: <http://pahro.gov.mt/chapter-5-3>, accessed 1 April 2014.

³⁸⁵ Legal Notice 204 of 2011.

³⁸⁶ Chapter 452 of the Laws of Malta.

³⁸⁷ By Legal Notice 433 of 2007.

³⁸⁸ Public Service Management Code, available at: <http://pahro.gov.mt/chapter-5>, accessed 2 April 2014.

³⁸⁹ Regulation 3 of the Regulations.

³⁹⁰ Public Service Management Code available at: <http://pahro.gov.mt/chapter-5>, accessed 2 April 2014.

the event of an international adoption (Para. 5.2.1.2.1 PSMC). The position of private sector employees will depend on their negotiated terms of service; otherwise the law stipulates a blanket four months' unpaid leave - called parental leave and taken in the form of parental leave - irrespective of the cause for the leave (including adoption). The Government had indicated its intention to extend the public sector adoption leave to the private sector.³⁹¹

The statutory maximum age of the child for entitlement to parental leave is eight years. It is the same for adoption, fostering and legal custody. Regulation 4(1) provides that parental leave shall be the individual right of both male and female workers.

The right is granted on a non-transferable basis. According to the Public Sector Management Code, however, if both parents are public employees they may share the leave period, provided they each take a continuous period.

The law is not express on the issue of surrogacy.

5. Modalities of application (Clause 3)

Parental leave must be availed of in established periods of one month each (Regulation 4(1)). Unless otherwise prescribed by collective agreement, the employer together with the employee may decide whether to grant the parental leave on a full-time or a part-time basis, piecemeal or in the form of a time-credit system. Therefore, agreement, collective or in default individual, is at the basis of the mode of enjoyment.

According to the Public Service Management Code, for public employees in the lower grades, employees who have at least twelve months of service are allowed to avail themselves of a maximum of twelve months unpaid parental leave on the grounds of birth, adoption, legal custody, and foster care of children who are under the age of eight. While the law (i.e. the Regulations) lumps all parental leave together, the PSM Code makes separate and particular provision for adoption leave and parental leave. Unpaid parental leave may be utilised in aggregates of four-month, six-month or nine-month periods, or the maximum of twelve months. The period of parental leave chosen may only be taken in one period and may be shared by both parents. When parents apply for parental leave, the selected period must be declared up front. Any outstanding parental leave that is not utilised (from the twelve-month entitlement) is forfeited and may not be availed of at a later date, unless covered by specific other provisions. The maximum of twelve months of unpaid leave may be availed of in respect of each child. By way of exception, four months of the parental leave entitlement may be broken down in periods of one month at a time, and until the child is eight years old. The director concerned, together with the employee, may decide that these four months are granted on a full-time or a part-time basis, in a piecemeal way or in the form of a time credit system.³⁹²

There is a minimum statutory notice period of three weeks. Notice must be in writing and specify the beginning and end of the period of leave (Regulation 6(1)). Three weeks are clearly considered to be sufficient notice to the employer and not too long to have to wait for the employee who may not have had very much time to make plans in advance.

For public employees taking unpaid leave, the Public Service Management Code provides that employees are required to give at least three months' notice, except where such leave does not exceed three months, in which case a three-week notice period would suffice. The period/s of unpaid leave to be availed of must be declared in the application.³⁹³

The employee must have been in the employment of the same employer for a continuous period of at least twelve months. Therefore, twelve months is the qualifying period. Special

³⁹¹ For a summary of the situation see 'The Adoption of Family Friendly Measures at the Maltese Workplace', Monday 2 June 2014, General Retailers and Traders Union, at http://grtu.net/data/index.php?option=com_content&task=view&id=3186&Itemid=33 accessed 21 August 2014.

³⁹² Paragraphs 5.3.3.1 and 5.3.3.2 of the Public Service Management Code, available at: <http://pahro.gov.mt/chapter-5-3>, accessed 1 April 2014.

³⁹³ Paragraph 5.3.3.3. Public Service Management Code, available at: <http://pahro.gov.mt/chapter-5-3>, accessed 1 April 2014.

rules apply for the purpose of calculating the period in the case of employees with a fixed-term contract (Regulation 4(1)). This statutory minimum period applies in default of a shorter period being established by agreement in the contract of service or any applicable collective agreement.

There are no special rules/exceptional conditions for access and modalities of application of parental leave to the needs of parents of children with a disability or a long-term illness. Regulation 6(2) provides that the employee may request parental leave in the 6 months after her return from maternity leave and that she then does not have to repay maternity pay (as provided for in article 36(20) of the Employment and Industrial Relations Act).

6. Adoption (Clause 4)

As to additional measures addressing the specific needs of adoptive parents, there is a rule stipulating the form of evidence required to be given to the employer (Regulation 5). Also, the Public Service Management Code makes provision for a right to eighteen weeks' paid adoption leave (leave for adoption purposes), and makes provision for the special needs of parents involved in international adoption.

7. Employment rights and non-discrimination (Clause 5)

Regulation 10 makes it unlawful to dismiss an employee solely because that employee takes or intends to take parental leave in accordance with the Regulations. As to unfavourable treatment, the Regulations provide for the right to return to the same job after the period of leave (Regulation 8), for entitlements during leave (Regulation 9), and for rights to request changes to working hours and patterns for a specified period of time (Regulation 9A).

Workers benefiting from parental leave have the right to return to the same job or, if this is not possible, to an equivalent or similar job consistent with their employment contract or relationship (Regulation 8).

While there is no express provision stipulating that rights acquired or in the process of being acquired by the worker on the date on which parental leave starts are maintained as they stand until the end of the parental leave, such can arguably be inferred from Regulation 9 (1) which in fact stipulates even greater entitlement to all rights and benefits accruing to other employees of the same class or category of employment, and preserves the right to apply for promotion during the period of leave. However, Regulation 9(2) excludes 'other leave, bonuses and allowances' from being claimed on resumption of duties during the period of parental leave.

The employment contract is deemed by implication from the scheme and provisions of the Regulations to continue for the period of the parental leave, but there is no express provision to this effect.

The employee is not paid for the period of parental leave, as far as the Regulations are concerned. The position is different for public employees in the case of adoption leave, for such employees are paid for fourteen weeks.

There is no social security allowance payable as a rule. The Public Service Management Code provides, however, that in the case of adoption an employee who takes the full eighteen weeks made available shall be paid (receive his or her pay) for the first fourteen, and receive for the last four weeks state assistance to the amount of maternity benefit payable under the relevant legislation. This is covered by the employer.

8. Return to work (Clause 6)

By Regulation 9A, whose wording closely follows the wording of the Framework Agreement, an employee returning to work may request changes in working hours and patterns for a specified period (by the employee in his request), and the employer must consider this request and respond to it, taking into account the employee's needs as well as his own.

Regulation 9A also provides that the employer and the employee should maintain contact during parental leave in order to make arrangements for appropriate reintegration, thus facilitating the return to work.

9. Time off from work on grounds of force majeure (Clause 7)

The law stipulates certain minimum rights of urgent family leave, by the Urgent Family Leave Regulations of 2007.³⁹⁴ All employees are entitled to time off from work on grounds of *force majeure* for urgent family reasons in cases of sickness or accident making the immediate presence of the employee indispensable. The circumstances covered include: (a) accidents to members of the immediate family of the employee; (b) the sudden illness or sickness of any member of the immediate family of the employee requiring the assistance or the presence of the employee; and (c) the presence during births and deaths of members of the immediate family of the employee. For the purposes of this regulation, ‘immediate family’ means the husband, wife and married or unmarried children, as well as family relations up to the first degree, and whether living in the same household or not and persons/children in their legal custody. No advance notification is required to be given by the employee except in those cases where it is possible for the employee to give at least twenty-four hours’ notice of an event which is to take place and which requires the absence of the employee from the place of work for urgent family reasons. The employer shall be bound to grant to every employee a minimum total of fifteen hours with pay per year as time off from work for urgent family reasons provided that the total number of hours availed of by the employee for urgent family reasons shall be deducted from the annual leave entitlement of the employee. The employer has the right to establish the maximum number of hours of time off from work in each particular case, save that the minimum time should not be less than one hour per case unless there is the specific agreement of the employee. The employer shall have the right to demand such evidence as may be necessary to verify and confirm the reason for the request for urgent leave by the employee. Part-time employees are entitled to *pro rata* leave.

For public-sector employees, the Public Service Management Code provides for urgent family leave as follows: urgent family leave may be utilised for urgent family reasons in cases of sickness or accident, which require the immediate presence of the employee. Urgent family leave is granted in the following circumstances, when the immediate family of the employee is involved in:

- (i) an accident;
- (ii) sudden illness or sickness requiring the assistance or presence of the employee; and
- (iii) presence during births and deaths.

Immediate family is taken to mean husband, wife, children, mother, father, brother and sister. For the purpose of urgent family leave, employees may avail themselves of sixteen hours of leave to be taken in not more than four sessions. Holiday leave used for the purpose of urgent family leave is deducted from the employees’ annual holiday leave entitlement. Except in cases where it is possible for the employee to give at least 24 hours’ notice, no advance notification needs to be given to utilise urgent family leave. However, before leaving their place of work, employees must inform their superior officer. The director concerned has the right to demand evidence that confirms the reason for utilising urgent family leave.

10. Final provisions (Clause 8)

In the view of the expert, minimum requirements have been enacted as required by the Directive. The national legislation does not as a rule apply or introduce more favourable provisions, except that public service employees are given more favourable treatment in the case of paid adoption leave, and in general rights continue to accrue during leave.

³⁹⁴ Legal Notice 427 of 2007.

11. Sanctions (Article 2)

Regulation 13 of the Regulations provides that any person contravening the Regulations shall be guilty of an offence and liable on conviction to a fine of not less than EUR 116.47 and not more than EUR 1 164.69. Compensation and the recovery of sums due is also available under the Employment and Industrial Relations Act 2002, Article 45, in an appropriate case and where due payments have not been made.

In the view of the expert, these sums, combined with the difficulty in practice of enforcing such rights, are not such as to effectively dissuade a determined employer.

12. Case law

There is no national case law which is either in conflict with CJEU case law or more favourable than the Directive, national legislation or the case law of the CJEU.

13. Practice and other relevant issues

These types of leave are regularly used in practice. It is true that they are overwhelmingly more regularly taken by mothers. One figure given is that of 99 % women to 1 % men taking parental leave in public employment in 2010.³⁹⁵ The Family Friendly report for 2010 on the public sector found that: ‘Although the number of males availing themselves of family-friendly measures is well below that of females, it can be noted that there was a marked increase in male employees who availed themselves of family-friendly initiatives which allow a better work-life balance without financial losses’. This would not however apply to parental leave, which is unpaid. In November 2009, 28 male employees availed themselves of teleworking. In 2010, a 61 % increase was registered as 45 male employees availed themselves of teleworking. Another pattern which emerges is that male employees tend to choose those family-friendly measures which balance their work and family responsibilities without decreasing their take-home pay. This may be an indication that Maltese society still operates within a traditional male-breadwinner model.

Attempts to raise awareness among parents that the rights pertain to both parents have been made, in particular by the National Commission for the Promotion of Equality (the NCPE) which is the main equality body in Malta. However, no positive action measures have been put in place. This may be the main gap at national level. Further, as has been pointed out above, there is an obvious public/private sector anomaly, with twelve months available to public-sector employees while a maximum of four months is statutorily available to private-sector employees. The highly gendered take-up of parental leave says a lot for gender stereotypes in Maltese society, indicating the need for positive measures which make it easier for men to take up parental leave without negative consequences. A culture shift needs to take place. Finally, it is clear that the fact that parental leave is unpaid is a major disincentive for parents.

THE NETHERLANDS – Rikki Holtmaat

1. Context

The Netherlands has a comprehensive social security system, based on social insurances and supplementary income support provisions, facilitating the reconciliation of work, private and family life. The various areas are each covered by a special law which contains specific

³⁹⁵ *Family Friendly Report* 2010 p. 5, available at: <http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CCwQFjAA&url=http%3A%2F%2Fpahro.gov.mt%2Ffile.aspx%3Ff%3D140&ei=Plc-U52FK4eX5ASlz4CABQ&usg=AFQjCNFOo7Lc1FjMd7YF6-PbQohad88hSQ&bvm=bv.64125504,d.bGQ>, accessed 4 April 2014.

provisions for all residents (national insurance schemes) or for employees (employees' insurance schemes).

All different types of care leaves can be found in the Work and Care Act of 2001 (*Wet arbeid en zorg – WCA*).³⁹⁶ This Act contains statutory provisions, but deviations from these norms, both to the advantage and to the disadvantage of the employee, are possible and can be found in the various collective labour agreements.

Pregnancy/maternity leave

In the Netherlands, maternity leave is granted for a period of sixteen weeks. Prior to confinement, a leave of between four and six weeks is compulsory, which implies that ten to twelve weeks remain for leave after confinement.

Women are entitled to receive a benefit equal to 100 % of their salary during their leave, up to a maximum daily wage of approximately EUR 196. Women must present a medical certificate confirming their pregnancy to their employer, who will have the costs of maternity leave reimbursed by the responsible government agency *UWV*. Self-employed persons can address this agency directly to receive maternity benefits, if they have worked at least 1225 hours over the last year.³⁹⁷

Women are entitled to 100 % of their normal earnings (with no upper limit) if they have to stop work earlier due to medical complications related to the pregnancy, and if they cannot return to work after giving birth (due to medical reasons related to the birth). In the latter case, an employee can receive 100 % of her salary for up to one year. Moreover, an employee cannot be dismissed during maternity leave.

Paternity leave

Fathers have a right to attend the birth of their child and an additional two days' leave which can be taken at any time within the following four weeks. They are also allowed paid time off to register the birth of the baby, which falls under the scope of calamity leave (see Section 9 below). The current Government has recently proposed a plan to extend the right to paternity leave with three additional days of (unpaid) leave to a total of five days.³⁹⁸

Parental leave

Parental leave is regulated in Articles 6:1-6:5 WCA. Parents who have worked for their current employer for at least one year are entitled to take a specified amount of parental leave to care for their own, adopted or foster children, until the child reaches the age of eight. This right is non-transferrable to the other parent. Parents can take 26 weeks off (pro rata for part-time employees) per child. The WCA, in addition, also grants a right to additional unpaid leave.

Employers are under a legal duty to agree to a request for parental leave which is made at least two months in advance, but the specific arrangements and amount of weekly leave still have to be agreed between the employee and employer. Parental leave is in principle not remunerated and employees do not receive an allowance during parental leave. Payment of parental leave is up to the discretion of the employer – most of the times, parental leave is unpaid, but under some Collective Labour Agreements employers do pay (part of) the salary during parental leave. It is more common, but not standard, to retain (full) salary in the public sector.

Parents taking parental leave are entitled to a tax reduction of approximately EUR 4.00 for each hour of parental leave taken, but plans exist to abolish this tax benefit.³⁹⁹

Adoption leave

Adoption leave is a separate category of leave, different from the other forms of care leave. Both of the adoption parents (or foster parents) are entitled to four consecutive weeks of leave

³⁹⁶ Law of 16 November 2001, *Staatsblad* 2001, 567.

³⁹⁷ However, their benefits are significantly lower, as the maximum benefits available to this category are the equivalent of the statutory minimum wage.

³⁹⁸ *Kamerstukken II*, 2013-14, 32 855 no. 15.

³⁹⁹ *Kamerstukken II*, 2013-14, 33 716 no. 3. *Staatsblad* 2012, 152

for the adoption of a child. An employee who has an adoptive child can take this leave starting at most two weeks before the arrival of the adoptive child and until sixteen weeks after the child's arrival on the basis of Article 3(2) WCA. Adoption parents are also eligible for parental leave.

Both adoption parents are eligible for an adoption benefit equal to 100 % of their salary during leave, which will be paid by the aforementioned government agency *UWV*, either directly or through their employer. Self-employed persons, however, are not entitled to receive adoption benefits, whereas self-employed persons are entitled to pregnancy/maternity benefits.

Care leave

All employees are entitled to a short-term leave of a maximum of 10 days (*pro rata* for part-time employees) to care for a sick child, parent or partner.⁴⁰⁰ Employees receive payment during this time of up to 70 % of their normal salary, paid by the employer. The employer is only allowed to refuse a short-term care leave if the employee's absence were to result in serious problems for the company or organisation.

Employees can also request a long-term leave to take care for a close relative.⁴⁰¹ An employee may take a maximum of half the number of hours that he/she works as care leave for a period of up to twelve weeks, and can request different arrangements (Article 5:10(4) WCA). This leave is unpaid, although the applicable collective labour agreement may contain a different arrangement. Again, the employer is only allowed to refuse a long-term care leave if the employee's absence were to result in serious problems for the company or organisation and is not allowed to judge the actual need for the care.

2. Implementation of Directive 2010/18

Directive 2010/18 has been implemented by means of an adjustment of the Work and Care Act (WCA). A Bill to that effect was adopted by Parliament in 2012.⁴⁰² According to the Government, no major changes were needed, as the major part of Dutch legislation on parental leave was already in line with the Directive's requirements. Still, the Bill included two important amendments.

First, the provision in the Civil Code which prohibits dismissal because of making use of the right to parental leave (Article 7:670(7) CC) was complemented with a provision in the WCA (Article 6:1a) which offers protection against suffering any kind of disadvantage because someone has used his/her right to take parental leave or has assisted someone else in obtaining such leave.

Second, in the Working-Time Act (*Arbeidstijdenwet*) a new provision has been included (Article 4:1b) in which the person who has used his/her right to take parental leave is given a right to request adapted working hours during a period of one year after the parental leave period has expired.

The Netherlands has drawn up a transposition table in order to illustrate the correlation between the Directive and transposition measures. This table has been published in the Explanatory Memorandum to the Bill.⁴⁰³

3. Purpose and scope (Clause 1)

The Work and Care Act is directly applicable to both the public and the private sector and applies to both full-time/part-time and unlimited/fixed-term contracts, as well as to persons with a contract of employment or employment relationship with a temporary agency.

⁴⁰⁰ WCA Article 5:1 jo. 5:2.

⁴⁰¹ A close relative is understood to mean: the employee's partner, parents, partner's parents, and children (and their partners). The Government is planning on widening the scope of persons for whom an employee can take care leave, possibly including other persons close to them, such as friends and neighbours.

⁴⁰² *Kamerstukken II*, 2011-12, 33 107 nos 2 and 3. *Staatsblad* 2012, 152.

⁴⁰³ *Kamerstukken II*, 2011-12, 33 107 no. 3.

4. Parental leave (Clause 2)

Employees in both the public and the private sector can take a parental leave of 26 times the number of working hours per week. This has not been revised after the entry into force of the Directive.

As mentioned above, parental leave can be taken until a child is eight years old (without any difference between biological and adopted children). The entitlement is individual for each of the parents and cannot be transferred to the other parent.

We assume that parental leave is also available in case of surrogacy, as the parents who raise the child can be equated to adoption parents, which implies that they enjoy the same rights as biological parents. The expert is not aware however of any Dutch case law on this matter. It is unknown to the author of this report whether surrogacy often occurs in the Netherlands (we could not find any data on the prevalence of surrogacy). Commercial surrogacy is prohibited.

5. Modalities of application (Clause 3)

Parental leave has to be taken part-time over a period of no more than 12 months, unless the employer agrees to a full-time leave. The default option is to take parental leave for 50 % of the working hours: so employees with a full-time contract (38 hours per week) would take nineteen hours off every week. Leave can be taken for more hours a week during a shorter period or for less hours a week over a longer period, but only if the employer agrees (Article 6:2(5) WCA).

The employee can request not to take / continue the parental leave, because she takes pregnancy, maternity or adoption leave. The employer does not have to grant the request any earlier than four weeks after the request has been made (Article 6:6(2) WCA).

In August 2011, the Government proposed a Bill to Parliament in which several of the procedural regulations concerning parental leave and adoption leave will be changed in order to make it easier for workers to take leave and to arrange this leave in such a (flexible) way that it will meet their specific needs. This Bill has been discussed in Parliament, but it has not been voted on yet by the Dutch Senate.⁴⁰⁴

There is a notice period. Employers are under a legal duty to agree if the request for parental leave is made at least two months in advance. If considerable business interests render this necessary, the employer may, in consultation with the employee, adjust the distribution of the leave taken over the working week (Article 6:5(3) WCA). The specific arrangements and the amount of weekly leave have to be agreed between the employee and employer. This notice period allows employers to cope with possible problems arising from the parental leave taken.

A length of service requirement in order to benefit from parental leave exists. The required period of service is one year. Successive fixed-term contracts with the same employer – a phenomenon that is very common in the Netherlands – do count as one period for the purpose of calculating the period of service.

If an employee chooses to diverge from the standard option, i.e. taking parental leave for more than 19 or 20 hours a week during a shorter period than 26 weeks or for fewer hours a week over a longer period, he/she needs the employer to agree. In this case, the granting of parental leave may be postponed or rejected for justifiable reasons related to the operation of the organisation: compelling business interests (*zwaarwegende bedrijfsbelangen*, see Article 6:2(5) WCA). It turns out from case law that this is not often deemed to be the case.⁴⁰⁵

No special arrangements are made for small firms, although judges will be quicker to conclude that compelling business interests which may justify the rejection of parental leave are present when it concerns smaller firms.

⁴⁰⁴ *Kamerstukken II*, 2010-11 32 855, nos 1-3.

⁴⁰⁵ It goes beyond the scope of this report to include this case law, but examples can be found in W.L. Roozendaal *Werk en Privé; de strijd om tijd in het arbeidsovereenkomstenrecht* Dissertation, University of Nijmegen 2011.

No special rules or exceptional conditions for access and modalities of application of parental leave to the needs of parents of children with a disability or a long-term illness have been included in the WCA. The Government explicitly stresses in the Explanatory Memorandum to the Bill implementing Directive 2010/18 that the current arrangements, which allow for great flexibility as regards how and when the leave can be taken, make special conditions for this category of workers superfluous.⁴⁰⁶

It is important to note that, on the basis of Article 6:8 WCA, collective labour agreements may provide for arrangements that are less beneficial to the employee in certain cases.

6. Adoption (Clause 4)

On top of the four weeks of adoption leave, mentioned above, there are no additional measures to address the specific needs of adoptive parents, as these parents enjoy the normal right to parental leave.

7. Employment rights and non-discrimination (Clause 5)

It is prohibited to dismiss an employee *because* he/she applies for or takes parental leave and any dismissal for that reason may be declared null and void on the basis of Article 7:670(7) Civil Code, but it is not prohibited to dismiss an employee *during* parental leave. In practice, it is often difficult to prove that the parental leave constituted the reason for dismissal, as employers will argue that this did not play a role.

There is no explicit legal right to return to the same or a comparable job after having taken parental leave (nor is this the case after having taken pregnancy/maternity leave).⁴⁰⁷ The Government did not deem it necessary to implement these provisions in the Directive since this right is guaranteed under the right not to be treated unfavourably with respect to any condition of work, or the prohibition on dismissing somebody because of pregnancy, childbirth or motherhood.⁴⁰⁸ The European Commission does not share this view and started an infringement procedure, as it considered the Dutch system to be insufficient as regards the protection of the right to return to the same or comparable job.⁴⁰⁹ The expert agrees with the Commission that an explicit right to return in the same or in a comparable job would clarify and enhance the implementation of this EU standard in Dutch law and practice.

The status of the employment contract or employment relationship remains unchanged, as do the entitlements to social security during the period of parental leave.

Collective labour agreements may however contain provisions entitling employees to remuneration during parental leave. It is more common, but not standard, to retain (full) salary in the public sector.

8. Return to work (Clause 6)

As described above, a new provision was included in the Working-Time Act (*Arbeidstijdenwet*) in 2012 (Article 4:1b), in which the person who has used his/her right to take parental leave receives the right to request adapted working hours during a period of one year after the parental leave period expires. This request needs to be submitted three months

⁴⁰⁶ *Kamerstukken II*, 2013-14, 33 716 no. 3.

⁴⁰⁷ W.L. Roozendaal *Werk en Privé; de strijd om tijd in het arbeidsovereenkomstenrecht* Dissertation, University of Nijmegen 2011, at p. 151.

⁴⁰⁸ After this opinion of the Government was given, the inclusion of Article 6:1a WCA took place. This provision (see section 2 of this report) could possibly also be relied upon when the employer changes the terms of the contract during the parental leave.

⁴⁰⁹ Infringement proceedings 2006/2539, initiated with the transposition of Directive 2002/73/EC, repealed by Directive 2006/54/EC. The case was referred to the CJEU on 24 January 2013, after the proceedings did not yield a final solution, as the Dutch authorities insisted that 'this protection is inherent to the judicial situation' in the Netherlands.

before the end of the parental leave. The employer has to decide within a period of four weeks after the request has been made.⁴¹⁰

It is, moreover, possible for all workers to request changes to their working hours under the Act on Working-Time Adjustment (*Wet aanpassing arbeidsduur*). This Act applies only to employers with a minimum of 10 employees. Employees do not need to state the reason for such a request, unless they are obliged to do so based on the applicable collective labour agreement. The employers are obliged to consider and respond to such requests and can only reject them for justifiable reasons related to the operation of the organisation, the aforementioned compelling business interests. Only employees who have worked for their current employer for at least a year can request for an adjustment, a request which needs to be submitted at least four months in advance.

9. Time off from work on grounds of force majeure (Clause 7)

Workers are entitled to (paid) time off from work on grounds of force majeure for urgent family reasons in case of sickness or accident. If it concerns a temporary problem (for example a sick child), calamity leave (*calamiteitenverlof*) is available and cannot be refused by the employer (Article 4.1 WCA).

This calamity leave can range from a couple of hours to a few days. For more prolonged problems, it is possible to take short-term or long-term care leave (see above). The entitlement to calamity leave has not been limited, but this kind of leave is only intended for unexpected and grave events.

The conditions of entitlement to such time off from work or more detailed rules may be specified in the various collective labour agreements.

10. Final provisions (Clause 8)

Dutch legislation on parental leaves was, for the larger part, already in line with the European requirements before the Directive entered into force. It is essential to note that many Dutch collective labour agreements apply more favourable provisions regarding pregnancy and maternity leave and remuneration during parental leave.

11. Sanctions (Article 2)

It is doubtful whether national legislation provides for effective, dissuasive and proportional sanctions for violations of the rules provided by the Directive. Employees who feel that their employer has broken one or several of these rules can bring an action under labour law to a civil court (private sector) or administrative court (civil servants). A system of free legal aid ensures that those with very low incomes do have access to justice. However, a problem may be that most people do not want to start litigation when their employer does not want to grant parental leave, as they fear adverse consequences (especially in times of economic downturn and unemployment). Moreover, the law does not specify which sanctions may be imposed in the event of violations of rights under the WCA. When a legal conflict arises regarding the question of whether an employer has unjustifiably denied a right to parental leave, the expert expects that most of the time – instead of actually obtaining the leave after lengthy legal proceedings – the labour relationship will seriously suffer and the employer will ask the court permission to dismiss the employee; and the most the claimant will get out of it will be a relatively high compensation for the dismissal following court proceedings.

12. Case law

The expert is not aware of any case law relating to parental, adoption and/or time-off leave that is contrary to the relevant case law of the CJEU. The Directive is automatically

⁴¹⁰ *Kamerstukken II* 2010-11, 33 107, nos 1-3.

applicable in the national legal system, as it has been deemed sufficiently clear and precise to be justiciable in concrete cases, as required by Articles 93 and 94 of the Dutch Constitution.⁴¹¹

13. Practice and other relevant issues

All types of leave described in this report are actually used in practice, but are more frequently taken by women.⁴¹² In addition, women more often than men permanently adapt their working hours (taking on a part-time job) after they have a child. A balanced share of family responsibilities between both parents remains the topic of much public debate, but no positive action measures are currently in force.

NORWAY – Helga Aune

1. Context

Parental leave is legally defined as a right to time off from work, as stated in the Working Environment Act⁴¹³ (WEA) Chapter 12. This right to time off is mirrored in the National Insurance Scheme Act⁴¹⁴ (NIA) Chapter 14, which provides for a right to pay (daily allowance) from the National Insurance Scheme (NIS). The employer is not responsible for making the payments as all costs are covered by the NIS. The NIS receives contributions from state budgets and is co-financed through taxes paid in part by the employees. In addition, there are anti-discrimination provisions, specifically aimed at protecting employees making use of their right to parental leave, in the Gender Equality Act (GEA).⁴¹⁵

The WEA Section 12-1 provides for paid time off for pre-natal check-ups. An employee has an optional right to a maximum of 12 weeks leave during pregnancy. Of these 12 weeks, the last three weeks before the birth are obligatory. The employee is entitled to paid leave during pregnancy in a case where she cannot work due to health hazards at the work place and there are no possibilities to provide other suitable job tasks, see NIA Section 14-4. Paid leave during pregnancy derives from a contribution from the NIA, a social security benefit, while the right to time off from work arises from the WEA Chapter 12.

In relation to the birth, the father has a right to two weeks leave in order to assist the mother. In the case of adoption, both parents have the right to two weeks leave. After the birth, there is a six-week obligatory maternity leave. It is only possible to avoid this maternity leave if the woman presents a doctor's note which states that returning to work will be best for her.⁴¹⁶

The rules on parental leave are stated in the WEA Section 12-5. Altogether, each parent is entitled to 12 months leave per child. In addition to the initial 12 months leave, the parents have a right to an additional 12 months leave for each child, so that the total leave may be 24 months. This latter 12-month period must be taken consecutively in time, i.e. directly after the first parental leave year and the parents may share the 12-month period as they wish. Single parents may use both 12-month periods. Adoptive parents and foster carers are entitled to the same parental leave as biological parents from the start of their care for the child, see the WEA Section 12-5(4). The right to leave does not apply to the adoption of stepchildren or when the child is 15 years of age or more.

⁴¹¹ See Cantonal Court Midden-Nederland (Amersfoort), 17 April 2013, ECLI:NL: RBMNE:2013: CA0026.

⁴¹² Government agency Netherlands Statistics (CBS) gathers data on parental leave that are freely accessible at: <http://statline.cbs.nl/StatWeb/publication/?DM=SLNL&PA=72022NED&D1=a&D2=a&D3=a&VW=T>, accessed 17 March 2014.

⁴¹³ *Lov om arbeidsmiljø, arbeidstid og stillingsvern mv. (arbeidsmiljøloven)*, LOV-2005-06-17-62.

⁴¹⁴ *Lov om folketrygd (folketrygdloven)*, LOV-1997-02-28-19.

⁴¹⁵ *Lov om likestilling mellom kjønnene (likestillingsloven)*, LOV-2013-06-21-59.

⁴¹⁶ Sections 12-3 and 12-4 of the WEA provide this information.

The provisions about leave in the WEA are paired with equivalent provisions regarding financial support/benefits in the National Insurance Act (NIA). The more detailed rules in the NIA are described in section 4 below.

Parental leave and adoption leave are separate categories of leave, but they are dealt with in the text of the law in the same sections.

The leave referred to as parental leave refers in everyday terms in Norway to the leave reserved for the mother in relation to pregnancy (including the compulsory leave of three weeks before the birth and the first six weeks after the birth) as well as to the remaining parental leave of either 46 or 56 weeks. In everyday language in Norway (as well as legal terminology) the term parental leave refers to a combined mix of maternity and paternity and parental leave. Generally speaking, this all refers to the initial 12-month period which is paired with pay from the NIA. It is thus hard to be perfectly clear and distinguish whether or not Norway actually has a proper maternity leave according to Directive 92/85. If those 14 weeks were to be subtracted from parental leave as described below, the question may be whether we are actually looking at parental leave of 35 weeks. This issue has not yet been addressed in national legal literature or in the courts. In addition to the initial 12-month leave as described above, there is the right to additional parental leave which is a right to leave from work, but not linked with a right to pay from the NIA.

In addition to the possibility for leave during the child's first year, there is the possibility to extend the amount of leave for a maximum period of up to three years, see the WEA Section 12-6. This extended leave is guaranteed the same amount of payment which is usually paid during the first year, but divided between the three years. This form of part-time leave is based on an agreement between the employer and the employee. The employer may only refuse such a request if such leave is highly impractical for the enterprise. This ensures a right to a combination of part-time work and part-time paid leave.

The 'Cash Benefit Act' (Kontantstøtteleven) offers financial support to those parents who do not make use of a kindergarten during the child's first two years.⁴¹⁷ This amount is thus in addition to the parental leave payment for those who take parental leave as a part-time leave stretched over a three-year period; see the WEA Section 12-6. The cash benefit system not only applies to employees but also to non-employed mothers. The final option is to apply to the employer for unpaid leave from work. This is not a right, but optional for the employer to accept or not.

2. Implementation of Directive 2010/18

Directive 2010/18 was implemented formally by decision of the EEA Committee on 1 April 2011.⁴¹⁸ It was stated that Norwegian law was already meeting the requirements of the Directives and no amendments to Norwegian law were necessary.

Norway has not drawn up and published tables to illustrate the correlation between the Directive and transposition measures (see Preamble 16).

3. Purpose and scope (Clause 1)

The national legislation is equally applicable to both the public and the private sector. The national transposing legislation includes contracts of employment or employment relationships related to part-time workers, fixed-term contract workers or persons with a contract of employment or employment relationship with a temporary agency, see the WEA Chapter 13, see Section 13-1(3) and see Chapter 12 regarding the various types of leave. In addition, the GEA is equally applicable for all sectors of the employment market, regardless of the type of contract, see Section 5 on pregnancy related leave.

⁴¹⁷ *Lov om kontantstøtte til småbarnsforeldre (kontantstøtteleven)*, LOV-1998-06-26-41.

⁴¹⁸ See the decision at: http://www.regjeringen.no/nb/sub/europaportalen/eos/eos-notatbasen/notatene/2009/okt/foredrepermisjon--forslag-til-nytt-dire.html?regj_oss=1&id=582617, accessed 7 April 2014.

4. Parental leave (Clause 2)

The total duration of parental leave in relation to a forthcoming birth and once the child is born is 245 paid days (49 weeks) at 100 % of the previous salary level,⁴¹⁹ or 295 paid days (59 weeks) at 80 % of the previous salary level⁴²⁰ (see Section 14-9 Paragraph 1, first sentence). These weeks include the three weeks mandatory leave before the birth. Starting with parental leave from the time of the birth, this is for 230 paid days (46 weeks)) at 100 % of the previous salary level⁴²¹ or 280 days (56 weeks) at a reduced daily pay rate, see the NSI Section 14-9, Paragraph 1, second sentence.

The period of adoption leave is 230 paid days (46 weeks) at the full previous salary level,⁴²² or 280 paid days (56 weeks) at a reduced rate of 80 %.⁴²³

In relation to multiple births or multiple adoptions at the same time, parental leave will be extended by an additional 25 paid days (5 weeks) for each child over and above the first child in a case where the 100 % of the previous salary type of leave is elected. If parental leave at a reduced pay rate is chosen, then parental leave is extended by 35 days (7 weeks).⁴²⁴

The leave, 230 or 280 paid days depending on what the parents choose, is to be shared between the parents on the condition that both parents fulfil the criterion for paid leave laid down in the NIA Section 14-6.⁴²⁵ The criterion is that a mother or father has been in paid employment for a minimum of 6 months during the last 10 months before the start of the parental leave period. This requirement may appear problematic, for example if a woman becomes pregnant whilst still on her first parental leave, because she would have no means to fulfil the starting criteria in order to obtain paid parental leave. This was the case in Finland where women in such a situation were not entitled to take a new parental leave; which was subsequently found in violation of the Parental Leave Directive in the CJEU judgment in *Kiiski*.⁴²⁶ However, the NAV (the NIS's administrative office) states on its net page that: 'If you have another child before the benefit period for the first child has been fully used, you lose the right to claim benefit for any remaining weeks for the first child. However, you are entitled to a full period of parental benefit for the second child. The new benefit period starts three weeks before the due date'.⁴²⁷ The criterion of 6 months paid employment in the NIA Section 14-6 is thus not problematic in practice.

Under Norwegian law the 15 paid days (3 weeks) before the birth and the first 30 paid days (6 weeks) after the birth cannot be shared between the parents, but are reserved for the mother.⁴²⁸ Interestingly, the term 'maternity leave' is not used in the NIA. The WEA Section 12-5(1) uses the term 'birth leave' for the 6 weeks leave after the birth.

The NIA Section 14-9 also states that the leave which is designated to one of the parents as the father's quota (10 weeks) or the mother's quota (10 weeks), as stated in the NIA Section 14-12, cannot be shared between the parents.⁴²⁹ However, the 6 weeks after the birth reserved for the mother are included in the mother's quota.⁴³⁰

⁴¹⁹ Limited to 6 G, the G is short for the *Grunnbeløp* (G) (the basic amount); a calculation factor for benefits from the NIS. As at 1 May 2013 the G is EUR 10 634.09 (NOK 85 245). See: <https://www.nav.no/Om+NAV/Satsar+og+utbetalingsdatoar/Grunnbel%C3%B8pet+%28G%29>, accessed 8 April 2014.

⁴²⁰ Limited to 6 G.

⁴²¹ Limited to 6 G.

⁴²² Limited to 6 G.

⁴²³ NSI Section 14-9, Paragraph 2.

⁴²⁴ NIA Section 14-9, Paragraph 4.

⁴²⁵ NIA Section 14-9 Paragraph 3.

⁴²⁶ Case C-116/06 *Sari Kiiski v Tampereen kaupunki* [2007] ECR I-07643.

⁴²⁷ See: <https://www.nav.no/English/English/Parental+benefit+-+general+information.353588.cms>, accessed 30 June 2014.

⁴²⁸ NIA Section 14-9, Paragraph 5, second sentence.

⁴²⁹ NIA Section 14-9, Paragraph 5 third sentence. The father's and mother's quota were both reduced by 4 weeks each, coming into effect for births and adoptions from 1 July 2014. These combined 8 weeks were transferred to the part of the parental leave which may be divided between the parents as they find best. See preparatory work to the amendment: Prop. 40 L (2013-2014 and Innst. 180 L (2013-2014), Amendment by Lovvedtak 88 (2013-2014).

⁴³⁰ Section 14-9 NIA, Paragraph 5, last sentence.

It is important to note that both the father's quota and the mother's quota were reduced from 14 weeks to 10 weeks. The 8 weeks that were subtracted in total (4 weeks from the former father's quota and 4 weeks from the mother's quota) have been added to the last (third) section of parental leave. This is the section that the parents may divide between themselves as they think best.⁴³¹ This was one of the first legislative amendments made by the new Conservative Government after it came into power in October 2013. The Government argues that this increases the autonomy of families, while critics observe that this will support the old traditional gender roles of caring in families. The change will take place starting with births and adoptions on 1 July 2014. After the amendments come into force in 2014, the leave will be transferable except for 10 weeks of parental leave for each parent. The period of 6 weeks reserved for the mother that immediately follows the birth is included in the parental leave reserved in the mother's quota and the situation has not changed as regards these 6 weeks.

In the case of the death of the child during the parental leave period, the parent may choose to continue parental leave with pay for a period of 30 days (6 weeks) during the remaining part of the leave period.⁴³²

The duration of parental leave has not been revised with the entry into force of Directive 2010/18. There is no difference in the duration of parental leave in the public sector and the private sector.

Parental leave is to be taken during the child's first year. The age limit for adopted children is 15 years. Generally, adoption of a spouse's child will not generate a right to paid parental leave.⁴³³

Surrogacy is not legal under Norwegian law. Some parents do, however, get children through surrogacy abroad. Several of these cases have been brought to the attention of the media. One case concerned a set of twins born to a surrogate mother in India where the Norwegian woman who arranged the surrogacy was not biologically related to the children. After nearly two years of living in India with the children, the Norwegian woman was finally allowed to take the children with her to Norway. Other cases have been about couples where one of the 'parents' is biologically related to the child, while the other is not. In such a case, only the biological parent will be granted paid parental leave, while the non-biological parent will first have to adopt the child and then rights to parental leave may be established.⁴³⁴

5. Modalities of application (Clause 3)

Parental leave is, for the vast majority of parents, taken as full-time leave. The possibility of taking the leave as part-time leave or piecemeal also exists. See the text in sections 1 and 4 of this report.

The rules regarding the notice period before taking parental leave are stated in the WEA Section 12-7. The general rule is to provide notice to the employer as soon as possible and with a minimum of 1 week's notice for leave lasting more than 2 weeks, a minimum of 4 weeks' notice for leave lasting more than 12 weeks and a minimum of 12 weeks' notice for leave lasting for more than a year. Not respecting the notice period does not mean that the employee must postpone the leave provided that the leave is necessary for reasons which were unknown to the employee at the start of the notice period, see Section 12-7, last sentence.

To benefit from parental leave, the employee must have been employed for 6 months of the last 10 months before the birth. This also applies in the case of successive fixed-term contracts with the same employer.

⁴³¹ See: <https://www.nav.no/Familie/Svangerskap%2C+f%C3%B8dsel+og+adopsjon/Regjeringen+endrer+m%C3%B8dre+og+fedrekvoten.372591.cms>, accessed 8 April 2014.

⁴³² NIA Section 14-9, Paragraph 6.

⁴³³ See: NIA Section 14-5, first sentence; and NIA Section 15-5, Paragraph 3, respectively.

⁴³⁴ See information about surrogacy issues at: <http://www.regjeringen.no/nb/dep/bld/tema/familie-og-samliv/surrogati.html?id=660199> and http://www.llh.no/nor/dine/barn/surrogati/Hvilke+rettigheter+har+et+barn+f%C3%B8dt+ved+surrogat%3F+Og+hvilke+har+foreldrene%3F.b7C_wlfYWE.ips, both accessed 8 April 2014.

Granting of parental leave may never be postponed for justifiable reasons related to the operation of the organisation. There are no special arrangements for small firms.

Regarding the rules of application of parental leave to the needs of parents of children with a disability or a long-term illness, see section 9 of this report.

6. Adoption (Clause 4)

See the description in section 2 of this report, following the regulations in the NIA Section 14-9.

7. Employment rights and non-discrimination (Clause 5)

To protect workers against less favourable treatment on the grounds of taking parental leave, the GEA Section 20 states the right of an employee upon return from parental leave following the WEA Section 12-5:

1. to return to the same or an equivalent position;
2. to benefit from improvements in work conditions that the employee would have been entitled to had he/she not been on leave; and
3. to file a claim for a pay rise and be evaluated on an equal footing with other employees in the enterprise.

Rights acquired by the worker on the date on which parental leave starts are maintained as they stand until the end of parental leave.

The status of the employment contract remains as such for the period of parental leave. This means that the person on leave is counted as an employee during the entire leave period.

There is continuity of the entitlements to social security cover under the different schemes, in particular healthcare, during the period of parental leave.

Parental leave is remunerated by the NIS. It is optional whether the employer chooses to pay the salary and then ask for a return from the NIS or whether the payment is made by the NIS directly. This applies for all sectors.

8. Return to work (Clause 6)

Workers returning from parental leave may request changes to their working hours and/or patterns for a set period of time under 'flexible working time'. The employer is obliged to consider and respond to such requests following the WEA Section 10-2(3), which means that the employer is not automatically obliged to agree to the request for flexible working time. The condition is that changes to the working time must be possible without causing too much trouble for the enterprise (see the WEA Section 10-2(3)). Such requests are not subject to certain conditions such as a minimum period of employment with the same employer. The employee may bring a complaint before the Employment Dispute Tribunal (Tvisteløsningsnemnda) in a case where the employer turns down the request.⁴³⁵

There are no specific mechanisms in the law to ensure that workers and employers will maintain contact during the period of leave and to make arrangements for any appropriate reintegration measures. However, it is quite common that the person on leave stops by and enjoys a lunch with colleagues and introduces the new child. Getting involved in work tasks is not viewed as a positive thing as the condition for receiving pay from the NIS is that this time is to be spent with the child.

⁴³⁵ See information about the Employment Dispute Tribunal at: <http://www.arbeidstilsynet.no/fakta.html?tid=78505>, accessed 8 April 2014.

9. Time off from work on grounds of force majeure (Clause 7)

Workers are entitled to time off from work on the grounds of force majeure for urgent family reasons in cases of sickness or accident, following the WEA Section 12-9(1)-(3). In addition, this section provides a right to leave when the child needs to be taken to medical appointments and when the usual babysitter of the child is ill. The right to leave under these circumstances is valid throughout the child's first 12 years of life. The amount of leave under this section is 10 days per year for one child and 15 days if the employee has two children or more. Regardless of the limitations in Section 12-9, the employee is guaranteed a right to leave with the condition that the employee is granted financial support in relation to care leave (financial support to families with heavy care burdens due to a child with a serious illness or a serious handicap) in accordance with the NIA.⁴³⁶

In instances of chronic illness, long-lasting disease or a handicapped child, the parent is entitled to 20 days leave per year until the child is 18 years old, see the WEA Section 12-9(3). In addition, the parent is entitled to leave to attend training on how to care for a child with these kinds of health needs, see Section 12-9 (3) last sentence. For instances of:

- hospitalisation of a child or placement in a health care institution; or
- time at home for convalescence after being sent home from such a health care stay; or
- life-threatening illness of a child or suffering from other serious disease or injury, the parent is entitled to leave under the WEA Section 12-9 (4).

There is an age limit of 12 years for the instances described in (1) and (2) and 18 years for cases like (3). For mentally impaired children there is no age limit.

Under the WEA Section 12-9(5), single parents (when the child lives with one of the parents only) are entitled to twice the number of days off. The same rule applies when one of the parents is in a health care institution for a long time and therefore unable to care for his or her child. As many as half of the care leave days may be transferred to the person co-habiting with the parent and who shares the care responsibilities (see the last sentence of Section 12-9(5)).

10. Final provisions (Clause 8)

All minimum requirements specified in the Directive have been met.

National legislation applies more favourable provisions as the length of parental leave is longer than the minimum number of weeks prescribed by the Directive and the father's quota is longer and with full pay compensation.

11. Sanctions (Article 2)

The national legislation, i.e. the National Insurance Scheme Act, provides for effective, dissuasive and proportional sanctions for violations of the rules provided by the Directive, in so far as all persons entitled to the payments according to the NIA do receive their payments and all employers respect the right to parental and adoption leave. This means that all parents having a baby will be granted their leave from their employers and the pay according to the NIA. This system works so well that it must be characterised as effective.

If an employer disregards the right to leave, the employee may file a complaint with the Employment Dispute Tribunal (Tvisteløsningnemnda) following the WEA Section 12-14. A decision of the Tribunal may be appealed to the courts. A complaint about a breach of the provisions of the GEA may in addition be presented to the Equality and Anti-Discrimination Ombud (Ombud), linked with a possibility to appeal to the Norwegian Equality Tribunal (Tribunal) complaint system. In addition, it is possible to bring a complaint concerning a breach of the Gender Equality Act directly before the courts. The rules on compensation and reparation are stated in the GEA Section 28, which regulates liability for damages. Any

⁴³⁶ *Omsorgspenger, pleiepenger eller opplæringspenger etter folketrygdloven.*

employee who has been subjected to illegal differential treatment in contravention of sections in the GEA regarding equal treatment, equal working conditions and equal pay is entitled to compensation regardless of whether the employer is at fault or not. Compensation must be fixed at the amount that is reasonable, with reference to the financial loss that was suffered, the situation of the employer and the employee and all other relevant circumstances. The very few cases handled by the courts show that the level of compensation awarded in cases of pregnancy discrimination is adequate, dissuasive and proportionate. However, as most cases are brought to the Ombud/Tribunal for gender equality issues and the Ombud and the Tribunal are not, according to the law, entitled to award damages; this signifies weak protection against discrimination and weak access to the court structure. People file complaints with the Ombud as this is a no-cost system and many cases are resolved when employers choose to follow the advice of the Ombud. However, in so far as Norwegian legislation does not fully respect the requirements of the Directive, for example that maternity leave of 14 weeks is not specifically stated in the Act, individuals need to bring a complaint to the European Surveillance Agency⁴³⁷ and that remains to be done.

12. Case law

The Gender Equality Ombud's Report 2013 provides a detailed overview of court cases as well as complaints to the Ombud and the Tribunal during the period 2007-2012.⁴³⁸

The blurry line between maternity leave and parental leave as enacted in Norwegian law does not, in the view of the expert, meet the requirements of the Directives. Norwegian women do not have a legislative right to 14 weeks maternity leave in line with the Maternity Leave Directive 92/85 and as stated in the CJEU case *Commission of the European Communities v Grand Duchy of Luxembourg*.⁴³⁹ The disadvantage of this is evident when the three weeks before a birth is obligatory leave and the six weeks after the birth is obligatory leave and these weeks all count in the mother's quota of parental leave. Regard needs to be taken of the motive of the Maternity Leave Directive (which is to guarantee the woman the necessary time to convalesce after the birth), which is different from the Parental Leave Directive (the purpose of which is to guarantee child care). Norwegian women are thus not secured 14 weeks maternity leave to convalesce. In addition, Norwegian women are secured a lesser quota of parental leave than men, as the mother's quota is in fact covering the maternity period of the leave.

As examples of more favourable rights than the provisions of the Directive, one may mention that the father's quota is paid and the parental leave for both mothers and fathers is longer than the parental leave as prescribed in Directive 2010/18.

13. Practice and other relevant issues

The types of leave described in section 1 are all used in practice. A number of initiatives are carried out by the state in terms of disseminating adequate information to all stakeholders regarding the rights of pregnant women and parents to maternity, adoption and parental leave, through all local NAV offices⁴⁴⁰ as well as by giving information on the NAV's website.⁴⁴¹

The mother's quota and the father's quota are taken by more than 90 % of all employees, as the weeks are non-transferable. The remaining parental leave period (not designated for either the mother or the father) the parents may divide between them as they see fit. In 2011

⁴³⁷ See ESA at: <http://www.eftasurv.int/about-the-authority/the-authority-at-a-glance/>, accessed 8 April 2014.

⁴³⁸ *The prohibition against discrimination because of pregnancy and parental leave in employment – a summary (Forbudet mot forskjellsbehandling pga. graviditet og foreldrepermisjon på arbeidslivets område – en oppsummering)*. The report is available at: <http://www.ldo.no/Global/Diverse%20PDF/Graviditets-%20og%20foreldrepermisjon.pdf>, accessed 9 April 2014.

⁴³⁹ Case C-519/03 [2005] ECR I-03067, at Paragraph 32.

⁴⁴⁰ The Norwegian Labour and Welfare Administration, securing citizens their rights according to NIA.

⁴⁴¹ www.nav.no.

82 % of mothers made use of the last third of parental leave.⁴⁴² The statistics prove that traditional gender roles are strong in Norway. This may also be linked to the fact that Norwegian health authorities recommend breastfeeding up to the age of 6 months when solid food is introduced. However, given the long leave, more sharing of care duties is regarded as important by researchers.

These quotas (the designated parts of parental leave that are not transferable) may perhaps be seen as a form of positive action measures to promote a more balanced share of family responsibilities between both parents in relation to such leave. As the leave is non-transferable, the effect is that both parents take part in the care at the very beginning of the child's life. This changes the dynamics between the two parties to the relationship and their future co-operation regarding care. It has also changed the perspective of employers who, after 20 years of paternity leave, expect all male employees to claim this leave.

The one significant gap at national level is the lack of implementation of maternity leave as a separate leave and not as built-in to parental leave. See for more information section 12 above.

POLAND – Eleonora Zielińska

1. Context

The system of childbirth-related leaves in Poland is very complex and subject to frequent changes. It consists of several types of paid leaves: maternity leave, additional maternity leave, paternity leave and parental leave (the latter is referred to as *urlop rodzicielski*),⁴⁴³ which together amount to 52 weeks. In addition, the Labour Code (LC) provides for one generally unpaid childcare leave (*urlop wychowawczy*), which lasts for a duration of three years. In addition, a short care leave (paid) in case of emergency is also available.⁴⁴⁴ Workers who have adopted a child are also entitled to all of these leaves. The childcare leave (*urlop wychowawczy*) and short emergency care leave correspond strictly with Directive 2010/18. However, in the literature it is sometimes rightly assumed (with reference to the goal of this Directive), that 'parental leave' within the meaning of EU law should be understood broader as referring to all forms of release from work following childbirth (other than those covered by the maternity leave Directive 92/85/EEC), the goals of which are to enable parents to share their responsibilities with regard to childcare,⁴⁴⁵ Considering this, although the changes made to additional maternity, paternity, and parental leaves were not formally treated as the transposition of Directive 2010/18 in Poland,⁴⁴⁶ this report will not only concentrate on childcare leave (*urlop wychowawczy*), but will also occasionally refer to these leaves.

⁴⁴² See the Ministry of Children, Equality and Social Inclusion information in Prop. 126. L (2011-2012) page 8, chapter 2.4.3. Available at: http://www.regjeringen.no/nb/dep/bld/dok/regpubl/prop/2011-2012/prop-126-l-20112012.html?regj_oss=1&id=683914, accessed 8 April 2014. See also C. Egeland, et al., *S.t. Lyng og H. Svare: Erfaringer med og konsekvenser av graviditet og uttak av foreldrepermisjon i norsk arbeidsliv (Experiences with and consequences of pregnancy and utilisation of parental leave in Norwegian employment)* Report 2-2008 Arbeidsforskningsinstituttet, Oslo 2008.

⁴⁴³ It has to be noted that in reports prepared before 2013 (before the provisions about parental leave had been introduced) the term 'parental leave' was used with respect to childcare leave (*urlop wychowawczy*), in the meaning used in this report.

⁴⁴⁴ All these leaves are regulated by the Labour Code in the following Articles: 179.1 – 184, 186 – 186.8, and 188 – 189 (Law of 26 June 1974 Labour Code (unified text Journal of Laws of Republic of Poland (JoL) of 1998 r. No. 21 Item 94, with further amendments).

⁴⁴⁵ B. Godlewska-Bujok *Implementacja dyrektywy 2010/18/UE dotyczącej urlopu rodzicielskiego (Implementation of Directive 2010/18/EU on Parental Leave)*, Prawo Europejskie w Praktyce, 2013, December, p. 51.

⁴⁴⁶ Law of 28 May 2013 on amendment of the Labour Code and other laws (JoL 2013 Pos. 675) and Parliamentary document no. 1310 with reasoning, <http://www.sejm.gov.pl/sejm7.nsf/druk.xsp?nr=1310>, accessed 5 April 2014.

2. Implementation of Directive 2010/18

The formal amendment of the Labour Code (hereafter: LC) with respect to childcare leave, implementing the provisions of Directive 2010/18, took place in the Law of 26 July 2013,⁴⁴⁷ which entered into force on 1 October 2013.⁴⁴⁸ The tables to illustrate the correlation between the above Directive and the transposition measures constituted an appendix to Parliamentary Document No. 909 of 21 November 2012, including the draft law.⁴⁴⁹ Provisions regarding additional maternity leave and paternity leave were introduced into the Labour Code in 2010,⁴⁵⁰ and since then have been subject to several changes. The current wording (parental leave: *urlop rodzicielski*) was introduced by the law of 28 May 2013 on the amendment of the LC and other laws.⁴⁵¹ Given the fact that the law was not formally a transposition of Directive 2010/18, it did not include the tables to illustrate the correlation.

3. Purpose and scope

The scope of the Directive is not clear in the Polish legal context given the fact that Directive refers to ‘workers’ (persons in an employment relationship⁴⁵²) rather than to all types of ‘employment contract’. The Polish Labour Code also refers to ‘employment relationship’, but such that it may be initiated among others by concluding an employment contract (in addition to appointment, nomination, election etc.). Keeping these doubts in mind it is worth mentioning that although the focus of this report is mainly on the transposition of the Directive into the Labour Code, it should be pointed out that all of the aforementioned forms of childbirth-related leaves currently also apply to all other types of employment (not regulated by LC).⁴⁵³ The provisions of the LC, including those regarding childbirth and childcare-related leaves, apply both to the public sector and to the private sector and to both parents: women and men as well as adoptive parents on certain conditions are entitled to them.⁴⁵⁴ The right to parental and childcare leave does not depend on the kind of employment contract. This means that the leave is granted both to persons employed on the basis of an open-ended contract, as well as to workers with a contract for a specified period, e.g. for a trial period, for a fixed-term period, or for the performance of a specific work. Temporary workers, both male and female, are entitled to childbirth-related leaves and childcare leave according to the general rules set forth in the LC.⁴⁵⁵

⁴⁴⁷ *Ustawa z dnia 26 lipca 2013 o zmianie ustawy kodeks pracy, Dz.U. 2013 poz.1028* (Law of 26 July 2013 amending Labour Code, JoL 2013 Item 1028). It should be added that Poland asked for the implementation of this Directive to be postponed.

⁴⁴⁸ With regard to these changes, on the basis of the authorisation included in Article 186⁶ LC, a new ordinance of the Minister of Labour and Social Policy of 18 September was issued, regarding detailed conditions for granting childcare leave, JoL 2013, Item 1139, hereafter: the Ordinance.

⁴⁴⁹ They were published together with the draft on the website: <http://www.sejm.gov.pl/sejm7.nsf/PrzebiegProc.xsp?nr=909>. It is worth noting that the *European trade union confederation (ETUC) interpretation guide to Directive 2010/18* has also been translated into Polish and published.

⁴⁵⁰ Law of 25th November 2010 (JoL 2010 No 294 pos. 1655). This leave, originally amounting to one week, has been available since 1 January 2011.

⁴⁵¹ JoL 2013 Pos. 675, and Parliamentary document no. 1310 with reasoning, <http://www.sejm.gov.pl/sejm7.nsf/druk.xsp?nr=1310>, accessed 5 April 2014. It is worth mentioning that by changing the regulation, the language of legal provisions regarding special parental rights was also changed, and became more inclusive with respect to men.

⁴⁵² The essential feature of an employment relationship is that for a certain period of time a person performs services for and under the direction of another person in return for which he receives remuneration.

⁴⁵³ Respective provisions have been introduced by the Law of 28 May 2013 on amendment of the Labour Code and other laws (JoL 2013 Item 675), as well as by the Law of 26 July 2013 on the amendments of the Law on the system of social security (JoL 2013 Item 983). It should be noted that the introduction of all childbirth-related leaves has been justified by the pronatalist government policy. At the same time the reasoning to the draft law emphasized the fact that its contents lie outside the scope of EU law (Parliamentary Print No. 939, <http://www.sejm.gov.pl/sejm7.nsf/druk.xsp?nr=939>, accessed 5 April 2014).

⁴⁵⁴ The LC uses the term “care giver”. The Supreme Court in its ruling of 6 August 1980, V PZP 12/78, clarified that it *inter alia* covers adoptive parents. See also the comments with this ruling by A. Świątkowski, *Państwo i Prawo* 1982, No. 11, p.147.

⁴⁵⁵ Law of 9 July 2003 on the employment of temporary workers (JoL No. 166, Item 1608).

4. Parental leave (Clause 2)

In general the obligatory maternity leave has five time limits (from 20 to 37 weeks) depending on the number of children born from the same pregnancy (Article 180(1) LC), which after fourteen weeks the woman can transfer to the father of the child (Article 180 (5) LC). Also the additional maternity leave of six or eight weeks (depending on the number of children born from the pregnancy) which has to be taken after expiration of the obligatory maternity leave (Articles: 179.2(1) and 182.1.a LC), may be used by the father (Article 179.2 LC). In addition, the woman – and with her agreement also the father of the child – are entitled to 26 weeks of parental leave (*urlop rodzicielski*). Within the defined time limits the additional maternity leave and parental leave may be shared between both parents. Irrespective of these rights the father is entitled to paid paternity leave amounting to two weeks, which will be lost if the father does not use it during the first year of the child's life (Article 182.3 LC). (Articles: 179.1, 179.3 and 182.1.a LC). In addition, each parent is entitled to childcare leave (*urlop wychowawczy*) of a duration which generally amounts to a maximum of 36 months (Article 186 (2)LC). As a result of the transposition of Directive 2010/18, the possibility to take childcare leave has been extended until the time that the child reaches the age of five and a provision has been introduced to provide that parents (or adoptive parents) may share childcare leave for maximum period of four months and that each of the parents are solely entitled to one month of childcare leave that may not be transferred to the other parent (Article 186(4) LC).⁴⁵⁶ This last rule does not apply to parental leave (*urlop rodzicielski*).

In Poland there are no provisions regarding surrogacy. Hence the problem of leaves connected with childcare in such situations has not been regulated separately either.

5. Modalities of application (Clause 3)

According to Article 186(1) LC, in order to obtain the right to childcare leave (*urlop wychowawczy*), a worker must be in service for at least six months (not necessarily with the employer where the request is submitted).⁴⁵⁷ This condition does not apply to other leaves related to childbirth (maternity, additional maternity, paternity, and parental leaves). By providing the condition that almost all childbirth-related leaves have to be used one after the other⁴⁵⁸ and by limiting the possibility to take them in parts⁴⁵⁹ as well as by setting fixed time limits for filing (or withdrawing) the request (seven or fourteen days), the legislator attempted to provide better protection for the interests of the employer.⁴⁶⁰ The employer is obliged to allow the worker to take advantage of the leave during the period indicated in the request if it has been submitted within the prescribed time limits.⁴⁶¹ Should any of the requests be submitted without observing this deadline, the employer may delay the beginning of the

⁴⁵⁶ There are some exceptions to this rule. One parent is entitled to the entire childcare leave, if the other parent has died, is not entitled to parental powers or if these powers have been limited or suspended (Article 186(9) LC). A leave of 36 months also applies to single-parent families (Article 186(10) LC).

⁴⁵⁷ The six-month period may include all previous employment periods on the basis of an employment relationship, regardless of the reason why those relations were terminated and of the length of gaps between subsequent employments (Article 186 (1)LC). In case of citizens of EU and EEA Member States, the six-month period may also include employments periods on the territory of those countries See:

A.M. Świątkowski. Kodeks pracy. Komentarz. (Labour Law. Commentary). C.H. Beck, Warsaw 2012, p. 862.

⁴⁵⁸ The rule of direct use of all parts of the childbirth-related leave does not apply to childcare leave, which may be used at any time before the child reaches the age of 5 (Article 186(8) LC.)

⁴⁵⁹ Additional maternity leave is granted as a whole, or divided into two parts. Parental leave is granted as a whole, or divided into up to three parts (not shorter than 8 weeks), which have to follow each other directly (Article 182^{2a} (2) LC).

⁴⁶⁰ It is assumed that the two-week notice period is sufficient for the employer to be able to organise substitution for the employee taking advantage of the leave. However the opinion has been expressed that in fact it is too short. See: A.M. Świątkowski. Kodeks pracy. Komentarz. (Labour Law. Commentary). C.H. Beck, Warsaw 2012, p. 860.

⁴⁶¹ This means that if this time limit has been observed, the worker has the right to be admitted to work and to receive remuneration for the time of her/his readiness to perform work. See: A.M. Świątkowski. Kodeks pracy. Komentarz. (Labour Law. Commentary). C.H. Beck, Warsaw 2012, p. 860.

leave, but not longer than by two weeks from the day on which the request has been filed. There are no other legal regulations regarding the possibility of postponing by the employer of the childcare leave for justifiable reasons related to the operation of the organisation. Also, there are no special regulations regarding taking childcare leave by workers of small firms. According to Article 186(3) LC, if, due to a health condition confirmed by a decision about disability, a child requires personal care of a worker, then, regardless of the 'regular' time limits of leaves the worker may take 36 additional months of childcare leave, and the additional childcare leave may be granted before the child reaches the age of eighteen, even if the worker has not previously used the first 36 months of childcare leave to which he is entitled before the child reaches the age of five.

6. Adoption (Clause 4)

Similar rules regarding childbirth-related leaves, both for mothers and fathers, are applicable to adoptive parents (or non-profit foster parents) adopting children under the age of seven, or ten, if the child is disabled (Articles 182.4 and 183(1) LC). The length of the additional leave on conditions of maternity leave amounts to six up to eight weeks, depending on the number of adopted children. Paternal leave for adopted children has to be used within twelve months from the coming into force of the court order of adoption, not later however than until the child reaches the age of seven (ten, if the child is disabled) (Article 182³ LC). A worker adopting a child is entitled to 26 weeks of parental leave and to 36 of months of childcare leave on the basis of general provisions (Article 183.1. LC). This means that the childcare leave for adoption can only be used until the child reaches the age of five.

7. Employment rights and non-discrimination (Clause 5)

During the childbirth and childcare-related leaves (or requested shortening of working time) the LC provides for special protection of the employment relationship. As a rule the employer may not terminate the contract, from the day that the worker submits the request for the leave (or reduced working time) until the last day of the leave (or the day of return to regular work).⁴⁶² According to Articles 183.2 and 186.4 LC the employer has the obligation to readmit a worker at the end of the childcare leave in his former position. If employment in the same position is not possible, the employer has the obligation to employ him on the same conditions in another job position corresponding to the worker's professional qualifications, for remuneration not lower than the remuneration for work that the worker received in the position held before the leave.⁴⁶³ The LC does not explicitly state that the rights acquired (or those in process of being acquired) by the worker on the date on which parental leave starts, shall remain until the end of the leave. However, according to the case law workers on parental leave (*urlop wychowawczy*) have, for instance, the right to premium rewards if the time required for receiving them elapsed during parental leave.⁴⁶⁴ Workers on parental leave may also receive invalidity benefits in cases when disability occurred during parental leave,⁴⁶⁵ and they are entitled to buy the shares of an enterprise being privatised, on preferential conditions, just as other employees.⁴⁶⁶ Nevertheless, during the three years of parental leave the workers are not entitled to paid annual leave, which they only can take before the

⁴⁶² Not longer, however, than during a period of twelve months – see Articles 186.1 and 186.8 of the Labour Code. Further, however, the Labour Code allows for termination of the employment contract by the employer in case of bankruptcy or liquidation of the employer, and - in the case of childcare leave – also of reasons justifying termination of the employment contract without notice through the fault of the worker (disciplinary dismissal, Article 177(4)(5), 186.1(1) LC).

⁴⁶³ This provision is not clearly formulated and was interpreted differently until the Supreme Court's decision of 19 January 2008. Case no. II PK 143/07, OSNP 2009, Nos 5-6. Pos. 67, see further in Section 12 of this country report.

⁴⁶⁴ Resolution of Supreme Court of 3 June 1992, I PZP 33/92, OSN 1993, Nos 1-2 Pos. 10.

⁴⁶⁵ Judgment of Supreme Court of 15 January 1987, II URN 289/86, PiZS 1987, No 7 P. 62.

⁴⁶⁶ Resolution of Supreme Court of 6 February, III ZP 14/96, OSNAPIUS 1997 No18 Pos.334.

commencement of parental leave.⁴⁶⁷ Persons on childbirth and childcare leaves are still connected with the employer by the employment relationship. During the childbirth-related leaves the employee receives an allowance equal to 100 % of the salary in case of maternity, additional maternity, and paternity leave; and from 60 to 80 % in case of parental leave (depending on the time of the declaration about taking this leave). Childcare leave is not remunerated by the employer. Allowances in the form of a special supplement for taking care of a child are provided within the social security system but only low income families are entitled to family benefits. Childcare leave is considered as justified interruption in work. A person on childcare leave is covered by obligatory social and healthcare insurance.⁴⁶⁸ Contributions to these insurances are paid to the Social Security Institution (*ZUS*) from the state budget.

8. Return to work (Clause 6)

A worker may combine the additional maternity leave or parental leave with work for the same employer not exceeding half of the regular working time. In such case the leave is granted for the rest of the working time. Only exceptionally, with regard to problems with organisation of work, the employer may refuse to grant a request in this respect. He is obliged to submit the reasons for his refusal in writing (Article 182.1(6) LC). In relation to childcare leave, the worker may file a written request to lower his or her working time to a number of hours not less than half of his or her full-time work, in the period in which he or she would have been entitled to this kind of leave (Article 186.7(1) LC). The employer may not refuse such request. The LC does not provide for any other special reintegration measures. The regulations of teleworking and other flexible work arrangements in Polish labour law are not related explicitly to enhancing reconciliation, but they are available for parents returning from parental leave on a general basis (Articles 67⁵–67¹⁸ LC).

9. Time off from work on grounds of force majeure (Clause 7)

According to Article 188 LC, in every calendar year the employee taking care of at least one child under the age of 14 is entitled to 2 days' time off work, maintaining the right to remuneration.⁴⁶⁹ The LC does not require any evidence of urgent family reasons. Other cases of time off from work on the grounds of *force majeure* are regulated not in the LC, but in the law on financial benefits.

According to Article 32 Section 1 of the Law of 25 June 1999 on financial benefits from social security in case of sickness or motherhood⁴⁷⁰ a benefit is granted to the insured worker who has been released from the obligation to perform work due to the need to provide personal care for: a sick child until it reaches the age of fourteen; a child younger than eight in the event of the unforeseen closing of the nursery, kindergarten or school; or due to sickness or childbirth of the spouse of the insured person. Care benefit will be granted for the period of release from work due to the need to provide the above mentioned personal care, for a duration of no longer than 60 days per year. If the employer requires further time off from work, he or she may apply for unpaid leave on general conditions.

The monthly care benefits amount to 80 % of the base for calculating the benefits (Article 35 Section 1 of the above Law). According to Article 188 LC an employee raising at least one child until the age of fourteen is entitled to be released from work for two days per calendar year, at the time indicated by the worker, while retaining the right to remuneration. This right is granted regardless of the number of children. When both parents are working, the right to this two-day release from work is granted only to one person.

⁴⁶⁷ See W. Patulski in: W. Muszalski (ed.) *Kodeks Pracy: Komentarz (Labour Code: Commentary)*, C.H. Beck, Warsaw 2011, at p. 895.

⁴⁶⁸ However, a person on childcare leave is not covered by sickness and accidents insurance.

⁴⁶⁹ A male employee taking care of a child under 14 is also entitled to this right. However, if both parents are employed only one of them may benefit from this form of time off from work (Article 189¹ LC).

⁴⁷⁰ JoL 2010 No. 77 Item 5412 with amendments.

10. Final provisions (Clause 8)

Not all requirements resulting from Directive 2010/18 have been fulfilled in the Polish legal system. Most of the criticism refers to the lack of proper implementation of Clause 2 Section 1 of the Directive. The Polish legislator, while implementing the Framework Agreement to Directive 96/34/EC and eventually the present Directive, did not fully transfer the right to childbirth-related leaves and childcare leave as an individual right of every parent. The father, in principle, only has a derived right related to the right of the mother, but not an individual right. Only paternity leave (and one month of childcare leave) is an exclusive right of the father. As a result, the working father is not entitled to any part of maternity leave, additional leave or parental leave if the mother is not entitled to them, e.g. because she is not employed and therefore not subject to social security, despite the fact that he contributes to the sickness insurance system from his salary. The same situation will occur if the mother dies during delivery, (before being able to take the maternity leave).⁴⁷¹ If the mother is entitled to those leaves, the father can take advantage of them only on the condition that the mother waives her right. In another sense, this also applies to childcare leave (*urlop wychowawczy*). As mentioned in Section 4, the parents can take the childcare leave together during only four months. Even if these four months were qualified as individual rights of each parent, this is certainly not the case for the other 32 months of this leave. As a consequence only one of the parents or adoptive parents, eligible for childcare leave, may use this leave longer than four months. Also, only one of them has the right to shortened working time.⁴⁷²

The objection has also been raised that all paid leaves must be taken subsequently, one after the other, which excludes flexibility of any kind and makes its optional character an illusion. It is also criticised that there is no obligatory part of the parental leave, which would have to be used by each of the parents.⁴⁷³ With regard to childcare leave (*urlop wychowawczy*) there is specific criticism with respect to the exclusion of the possibility to use the leave after the child reaches the age of five in case of adoption. Objections are also raised stating that, despite recommendations resulting from the Directive, the Polish LC provides insufficient protection for the employer. The current notice period of two weeks seems too short to enable the employer to adjust the organisation of work, or to recruit a substitute.⁴⁷⁴ Subject to criticism is also the multiplication of various leaves related to the birth of the child, each having different consequences and a different form, without indication of the purpose such differentiation is supposed to serve. With this in mind it has been recommended to replace the current provisions with one, coherent and consequent form of parental leave, indicating that its purpose is to facilitate the reconciliation of parental and

⁴⁷¹ This inconsistency of the law was the subject of parliamentary interpellation No. 20171 in response to which the Ministry of Labour and Social Policy initially answered that this is indeed a legal gap, but there are no plans to fix it. However, after a tragic incident with a father of five children who was refused maternity leave after his unemployed wife died in childbirth, the Ministry changed its mind and promised to soon prepare a draft law in this respect; http://wyborcza.pl/1,91446,16000256,MPiPS_gotowy_projekt_o_urlopiach_rodzicielskich_m_in_.html, <http://www.regiopraca.pl/portal/porady/mama-w-pracy/gotowy-projekt-o-urlopiach-rodzicielskich-min-dla-samotnych-ojcow>, accessed 1 June 2014.

⁴⁷² The First President of the Supreme Court in his opinion about the draft law, adjusting the Polish Labour Code to the Directive 2010/18 considered that this situation is not compliant with the Directive because if a Member State grants rights to leave exceeding the minimum length required by EU law, this means that EU regulations also apply to the part of these rights that exceeds this minimum. Compare: Opinion of 20 December 2012 to the draft Law. Parliamentary Document No. 909, p. 3.

⁴⁷³ So: M.Latos-Miłkowska, *Urlop rodzicielski* (Parental leave), *Monitor Prawa Pracy*, No. 8, p. 39 and B. Godlewska-Bujok, *Implementacja dyrektywy 2010/18/UE dotyczącej urlopu rodzicielskiego* (Implementation of the Directive 2010/18/UE on parental leave) in: *Prawo Europejskie w praktyce (European Law in practice)*; http://pewp.pl/index.php?option=com_content&view=category&id=37&layout=blog&Itemid=56.

⁴⁷⁴ Given the length of the childcare leave, it is therefore suggested to extend the duration of the notice period regarding the intention to take the leave, to 30 days; M. Latos-Miłkowska, *Ochrona interesu pracodawcy* (Protection of the interests of the employer), Lexis Nexis, Warszawa 2013.

professional responsibilities of both women and men, which would allow better implementation of the recommendations resulting from the Directive.⁴⁷⁵

11. Sanctions (Article 2)

Workers whose employment contracts have been terminated during childcare leave, or who have been made redundant after returning from their leave, have the right to claim recognition of the termination as ineffective or to request to be readmitted to work. They can also claim damages on the basis of Article 45 of LC. Regardless, according to Article 12 of the Law of 3 December 2010 on the implementation of selected EU provisions on equal treatment (hereafter cited as Anti-Discrimination Law (AL)),⁴⁷⁶ a violation of the rule of equal treatment, e.g. for reasons connected to childcare-related leaves, each worker who has been discriminated against has the right to claim damages (Article 13 AL).⁴⁷⁷ There is no such rule in the LC; the provisions of the AL should be applied.

If the regulations dealing with parental rights of employees are violated (which is qualified as a contravention), the court may impose, upon motion of the Labour Inspectorate, a penal/administrative sanction on the employer in the form of a fine, the amount of which can vary between EUR 236 (PLZ 1 000) and EUR 7 093 (PLZ 30 000) (Article 281 LC). If the employer commits the criminal offence of malicious and persistent violations of employees' rights, the employer may be sentenced by a criminal court to pay a fine.⁴⁷⁸ Alternatively, the criminal court may also sentence the employer to a limitation of his/her liberty, or deprivation of liberty for a maximum period of two years.

The potential effectiveness of legal redress in discrimination cases vary depending on which provisions are applied; the LC or the AL. Although the AL also provides for compensation (Article 13), it does not set a minimum limit (which according to the LC cannot be lower than the minimum wage) and makes the reservation that with regard to compensation the general tort liability rules of the Civil Code apply. This means that the amount of compensation must not exceed the actual harm suffered. This rule does not apply to workers seeking compensation under Article 18.3.d LC.⁴⁷⁹ In most discrimination cases, the compensation awarded tends to be rather moderate, never exceeding ten times the minimum wage.⁴⁸⁰ Recently the media reported on an agreed damage compensation of EUR 4 000 (PLZ 16 000) to a father dismissed from work after having filed a request for paternity leave. Although it was considered discrimination on the ground of paternity, the compensation ordered by the court was half the amount requested by the father in the claim.⁴⁸¹ The compensatory and dissuasive effects of such court decisions are limited.

⁴⁷⁵ B. Godlewska-Bujok, *Implementacja dyrektywy 2010/18/UE dotyczącej urlopu rodzicielskiego* (Implementation of Directive 2010/18/UE on parental leave) in: *Prawo Europejskie w Praktyce*, 2013 December ss. 52-53.

⁴⁷⁶ JoL 2010 No. 254 Item 1700. This Law e.g. implemented Directives 2006/54/EC and 86/613/EEC, but did not transpose Directive 2010/41/EU. Article 2 of the Anti-Discrimination Law underlines its complementary nature, providing that it does not apply to workers, insofar as their situation is covered by provisions of the existing Labour Code.

⁴⁷⁷ This provision concerns damage (*odszkodowanie*), which in the Civil Code is understood as compensation for material loss, rather than *zadośćuczynienie* (which means compensation for moral damage). In the draft law that amends the AL (still pending in Parliament; Sejm print no. 1051) the proposal of respective change of Article 13 has been included. This consists of inclusion of compensation for both losses. However, it should be underlined that on the grounds of the LC (in which Article 18^{3d} deals with damage in cases of discrimination uses the same notion of *odszkodowanie*) the opinion prevails that in discrimination cases, this legal term should be interpreted as covering both meanings. See: W. Muszalski *Kodeks karny: Komentarz (Labour Code: Commentary)* in: W. Muszalski (ed.), Warsaw 2011 at p. 54.

⁴⁷⁸ From 10 to 540 day fines, which amount depends on the income of sentenced person and may be from 10 PLZ (EUR 2,5) up to 2000 PLZ (EUR 500) each.

⁴⁷⁹ Ref.: K. Walczak, *Zakaz dyskryminacji w stosunku do osób wykonujących prace na podstawie atypowych form zatrudnienia*, (Prohibition of discrimination of persons performing atypical work) *Monitor Praw Pracowniczych* 2012 No. 3 p.119.

⁴⁸⁰ The minimum wages for work in 2013 amount to approximately EUR 400 (PLZ 1 600).

⁴⁸¹ Ruling of 4 June 2014, <http://wgospodarce.pl/informacje/13756-sad-stanal-po-stronie-ojcow-dyskryminowanych-przez-pracodawcow>, accessed 8 June 2014.

12. Case law

There have been cases of discrimination against women in relation to maternity, expressed by difference in wage and by refusing access to professional training offered to employees, because of frequent use of childbirth-related leave.⁴⁸²

An issue of constitutionality arose with regard to the application of Article 2(3) of the Law of 12 December 1997 on Additional Annual Salary for Employees of the Budgetary Sphere (so-called 13th salaries) during maternity leave.⁴⁸³ Employees are entitled to such remuneration if they have worked for at least six months in one calendar year, unless one of the situations listed in the law occur. From amongst the rights associated with childbirth those exceptions only mention childcare leave. Hence no other periods of justified absence from work may be added to this category, such as maternity or parental leave.⁴⁸⁴ The Constitutional Tribunal in its judgment of 9 July 2012 declared this provision incompatible with the constitutional prohibition of discrimination and principle of protection of maternity, to the extent to which it omitted the period of maternity leave.⁴⁸⁵ Significant in this respect is also the ruling of the Supreme Court of 28 November 2003,⁴⁸⁶ regarding the amount of childcare leave in case of giving birth to twins, similar in its conclusion to the judgment of CJEU in *Zoi Chatzi*.⁴⁸⁷ The LC fails to regulate this issue *expressis verbis*. The Supreme Court however has interpreted the law such that the duration of the leave is not to be multiplied by two.

In the Supreme Court ruling from 19 January 2008 referred to above, the Court decided that the basis for calculating the remuneration after returning from childcare leave is not the remuneration collected by the worker before the leave, but the remuneration for which he/she would be eligible on the day of commencing work in the position occupied before the leave. In its reasoning the Court *inter alia* refers to EU law, especially to Directive 96/34/EU and the Framework Agreement on parental leave.⁴⁸⁸ As an argument the Court also indicated the constant tendency of the Polish legislator to strengthen the legal protection of employees on childcare leave from their professional condition being worsened, due to the gap in employment caused by the leave. This is realised by provisions safeguarding remuneration on the same level as that which they would receive if the leave had not taken place.

Many rulings of courts of lower instances referred to the problem of maternity allowance for the period of extended childbirth-related leaves. In one of the rulings from this series, issued on 18 of December 2013,⁴⁸⁹ the District Court for Middles city of Warsaw changed the decision of the Social Security Institution (*ZUS*), thus granting a mother the right to an allowance regarding additional maternity leave and parental leave, considering that the applicant had not been informed about her rights to the leave and the obligation to file an additional request for the allowance beforehand, neither by the employer, nor by employees of the *ZUS*. No case law has been found which would provide for more favourable rights than the provisions of the Directive.

13. Practice and other relevant issues

Some discriminatory practices exercised by employers have been observed. For instance, according to the LC in case of contracts concluded for a specific period, such contracts are

⁴⁸² One such case was brought to the Supreme Court, in which a woman sued her employer before the labour court, accusing him of discrimination based on sex, age and family status (five children). This was manifested in large disparities in income (her wage amounted to 58 % of the average salary of the entire crew) and bypassing her with regard to training. The Supreme Court in its judgment of 8 January 2008, II CP 116/07 recognized discrimination.

⁴⁸³ Dz. U. 1997 No. 160, item. 1080. Hereafter Law 1997.

⁴⁸⁴ The Supreme Court accepted such interpretation in Resolution of 25 July 2003 r. III PZP 7/03.

⁴⁸⁵ No. P 59/11.

⁴⁸⁶ No. II UK 94/02, OSNP 2004/6/106.

⁴⁸⁷ Case C-149/10 *Zoi Chatzi v Ypourgos Oikonomikon* [2010] ECR I-8489.

⁴⁸⁸ This ruling was in line with the judgment of the CJEU of 22 October 2009 in *Ch. Meerts v Proost NV*, Case C-116/08, J.T.T. 2010, p. 52.

⁴⁸⁹ No. XU-724/13.

extended automatically until the day of delivery only. The woman is entitled to maternity leave, but in such cases the protection does not extend to additional maternity and parental leaves, to which only the person who actually has the status of employee is entitled. There has been a practice that employers purposefully concluded employment contracts with women for a specified period, making it impossible for them to make use of parental leave.⁴⁹⁰ Despite the clearly defined rights of working fathers in Poland, they very rarely decide to take paternity leave. According to information from the Social Insurance Institution (ZUS) in 2010 6 % of working fathers exercised their right (17 244 persons) and in 2011 this number decreased to 14 897 fathers.⁴⁹¹ However, this rate seems to increase in 2012 and 2013.⁴⁹² A lack of comprehensive research makes it impossible to determine all causes of this phenomenon, as well as whether fathers are using any other forms of leave instead.⁴⁹³ Of all persons eligible for childcare leave in the last decade, less than 19 % took advantage of it. The overrepresentation of women was clearly visible. Only 0.3 % of eligible men took the leave, versus approximately 38 % of the women.⁴⁹⁴ In April 2014 the State Labour Inspectorate (*Państwowa Inspekcja Pracy*) published the results of its investigation into the layoffs of persons returning from maternity, paternity, and parental leaves and the observance of other employee rights, including those related to childcare. In this investigation 581 companies were examined. According to the report, in 2013 4.3 % woman and 10.2 % men were laid off within six months after returning from leave.⁴⁹⁵ In 8 % of these companies the employees had not been granted additional leave for a child up to fourteen. The research also shows that employment contracts are often substituted by civil agreements. In the event that a task-specific contract is concluded, childcare-related rights will not apply because such forms of employment exclude the possibility to pay sickness-insurance contributions. In addition, the report indicates that in cases of violation of the law, employees rarely go to court. Even in cases where the inspectors themselves referred matters to the court, the persons concerned often backed out of the proceedings and cases were frequently referred back. This results from the common conviction that one can usually achieve better results through direct contact between the Labour Inspectorate and the employer, rather than by going to court.

⁴⁹⁰ See: <http://www.zus.pl/files/Wyja%C5%9Bnienia%20w%C4%85tpliwo%C5%9Bci%20dotycz%C4%85cych%20zmian%20przepis%C3%B3w%20w%20zakresie%20zasi%C5%82ku%20macierzy%C5%84skiego.pdf>, accessed 1 June 2014.

⁴⁹¹ See: <http://praca.wp.pl/title.Przybywa-mezczyzn-korzystajacych-z-urlopow-ojcowskich.wid.13391767.wiadomosc.html?icaid=1ef99>, accessed 9 August 2012.

⁴⁹² Data from the first six months of 2012, the year when the duration of parental leave was increased to two weeks, show that already 9800 men had used paternity leave, which constitutes an increase of about 40 % compared to the first half of 2011; <http://www.gazetaprawna.pl/tagi/urlop-ojcowski>, accessed 9 August 2012.

⁴⁹³ In literature, reasons are noted such as lack of awareness of existing regulatory provisions, fear of losing the position in the company or experiencing discrimination from employer or other employees. The barriers for men wishing to take advantage of paternity leave are still stereotypes – childcare is considered ‘unmanly’, and the economic factor plays an important role. Given the fact that men usually earn more than women, the financial situation of the family becomes worse if the father takes unpaid child care leave. See: M. Sikorska, *Niepokoje matek związane ze sferą domu oraz życiem rodzinnym (Mothers’ concerns related to the sphere of home and family life) and Ciemna strona macierzyństwa. O niepokojach współczesnych matek (The dark side of maternity. What mothers worry about)* Report AXA 2012, ed. M. Sikorska. Available at: <http://www.axa-polska.pl/oferta-indywidualna/biuro-prasowe/aktualnosci/art.123.raport-axa-ciemna-strona-macierzynstwa-o-niepokojach-wspolczesnych-matek>, accessed 9 August 2014. See also: M. Fuszara (ed.) *Nowi mężczyźni? Zmieniające się modele męskości we współczesnej Polsce (New men? Changing patterns of masculinity in contemporary Poland)*, Trio 2008.

⁴⁹⁴ See: Table 29 Workers and persons who stopped working after 2001 with at least one child under eight by using parental leave for a minimum of one month. Total, Główny Urząd Statystyczny (Central Statistical Office). *Prawa i obowiązki rodzinie w 2010 r.* Warsaw 2012 s.129 (Central Statistical Office. Reconciliation between work and family life in 2010, Warsaw 2012, p. 129). Own calculations. There is not a more recent publication on this subject.

⁴⁹⁵ The Chief Labour Inspector explained that the percentage of men who were laid off is high due to the relatively small number of men who took paternity or parental leave (in the companies examined). In 2012 only 39 men returned from parental leave, 4 of which were laid off. In 2013 the number of fathers amounted to 87 (with 11 layoffs). In 2012, 50 out of 875 women were laid off, and in 2013 the number was 34 out of 785. <http://finanse.wp.pl/kat,1013819,title,4-proc-kobiet-zwolnionych-w-ciagu-pol-roku-od-powrotu-z-macierzynskiego.wid.16495436.wiadomosc.html?icaid=112bdd>, accessed 1 June 2014.

PORTUGAL – Maria do Rosário Palma Ramalho

1. Context

In Portugal, several leaves aimed at facilitating the reconciliation of work, private and family life are regulated by the Labour Code (LC).⁴⁹⁶ These leaves can be divided into three main categories: leaves related to pregnancy and its specific risks; leaves related to childbirth or adoption; and leaves related to childcare in general, to childcare of disabled children or children with a long-term illness, and to other care purposes.

In addition to these leaves, time off from work and specific working-time schemes, such as part-time or reduced or flexible working-time arrangements for several purposes related to pregnancy, maternity or the reconciliation of working life and family life are also regulated by the LC.

As regards the leaves, the situation in the three categories described above is the following:

- Leaves related to pregnancy include leave for health reasons during pregnancy (Article 37 LC) and leave in case of miscarriage (Article 38). These leaves are granted only to women and their duration is decided by the doctor (in case of miscarriage: between 15 and 30 days).
- Leaves related to childbirth and to adoption⁴⁹⁷ are the following: i) maternity leave:⁴⁹⁸ on the ground of childbirth, this leave is up to 120 days or 150 days, on the basis of 100 % or 80 % of the social security allowance, respectively, and can be divided between the two parents, except the first six weeks after giving birth, which must be taken by the mother.⁴⁹⁹ If after this initial period the other party of the couple takes the leave for 30 days or for two periods of fifteen days, the total duration of maternity leave (120 or 150 days) is extended for 30 more days (Articles 40 and 41 of the LC); ii) paternity leaves: including a compulsory leave of ten days when the mother gives birth,⁵⁰⁰ an additional non-compulsory leave of ten more days in the following 30 days, and long paternity leave with the purpose of replacing the mother on maternity leave who dies or becomes ill after giving birth (Articles 43 and 42 of the LC);⁵⁰¹ iii) adoption leave:⁵⁰² going up to 120 or 150 days (Article 44 of the LC).
- Leaves for care purposes include parental leave,⁵⁰³ which in Portuguese is known as ‘additional parental leave’ (taken after maternity leave – Article 51 LC), and special leave to take care of small children, disabled children or children with a long-term illness, which can be taken after parental leave (Articles 52 and 53 LC).⁵⁰⁴ These leaves can be divided between the two parents.

As regards time off from work, for reasons related to pregnancy, maternity, adoption, or care, the following absences are regulated in the LC:

- the right to short absences from work to attend medical examinations related to pregnancy and childbirth (Article 46), or to consultations related to adoption procedures (Article 46);

⁴⁹⁶ Approved by Law No. 7/2009 of 12 February 2009.

⁴⁹⁷ In Portuguese all these leaves are now called ‘parental leave’, thus leading to some confusion in translation. For this reason, in the text, we chose to translate the Portuguese names of the leaves into the traditional designation in English and in the relevant footnotes we indicate the official Portuguese designation of each leave.

⁴⁹⁸ Maternity leave is now designated in Portuguese as ‘initial parental leave’ (*Licença parental inicial*).

⁴⁹⁹ This initial period of maternity leave is designated in Portuguese as ‘initial parental leave exclusive for the mother’ (*licença parental inicial exclusiva da mãe*).

⁵⁰⁰ Paternity leave is now designated in Portuguese as ‘initial parental leave exclusive for the father’ (*licença parental inicial exclusiva do pai*).

⁵⁰¹ This form of paternity leave is now designated in Portuguese as ‘initial parental leave of the father, replacing the mother’ (*licença parental inicial do pai em substituição da mãe*).

⁵⁰² In Portuguese: *licença de adoção*.

⁵⁰³ In Portuguese: ‘additional parental leave’ (*licença parental complementar*).

⁵⁰⁴ In Portuguese: ‘special leave to take care of children’ (*licença especial para assistência a filho*).

- the right to two hours of working-time reduction per day, for the purpose of breastfeeding (Article 47);
- the right to a leave of absence from work to assist a minor daughter who has given birth, a maximum of 30 days (Article 50), known as ‘grandparents leave’;
- the right to a short leave of absence for reasons related to the education of children (Article 249 No. 2(f)); and
- the right to a leave of absence for the care of children under twelve as well the right to a leave to take care of children over twelve or of another dependents within the family (Articles 49 and 249 No. 2(e)).

Finally as regards specific working-time arrangements, several schemes are regulated by the LC, such as part-time and flexible working-time arrangements (Articles 55 and 56).

As we can see from this general picture, these provisions of the Portuguese Labour Code combine both the provisions of the Pregnancy Directive and the provisions of the Parental Leave Directive and go beyond EU Law as regards some issues.

As to the notion of parental leave, this notion is rather comprehensive in Portugal, since all leaves related to pregnancy, maternity and paternity are now formally designated ‘parental leave’ (Article 39 of the LC). Parental leave is therefore a comprehensive notion integrating all leaves that have to do with the birth of a child and the care of babies and small children.

The more restricted EU notion of parental leave corresponds to the Portuguese ‘additional parental leave’, e.g. the leave that follows maternity leave, but indeed, when taking into account the possibility of taking the ‘special leave to take care of a child’ that follows the additional parental leave, it goes beyond the minimum period of the four months prescribed in Directive 2010/18.

2. Implementation of Directive 2010/18

Directive 2010/18 has not been formally implemented in Portugal and as far as we know no tables to illustrate the correlation between the Directive and transposition measures have been published.

However, since national legislation already provided several successive leaves that if considered all together are more extensive than EU provisions on parental leave, and because parental leave is already granted on a non-transferable basis, this led the Portuguese authorities to consider that there was no need to formally transpose Directive 2010/18.

3. Purpose and scope (Clause 1)

National legislation regarding parental leave is applicable to both the public and the private sector, according to the same terms. As regards private workers, this issue is dealt with in the LC (Articles 5, 52 and 53). The same provisions are directly applicable to public servants, based on a reference of Article 22 of Law No. 59/2008 of 11 September 2008, which establishes the rules applicable to these workers.

Employment contracts and employment relationships related to part-time workers, fixed-term contract workers or persons with an employment relationship with a temporary agency are included in the scope of the national provisions in this area.

4. Parental leave (Clause 2)

The total duration of parental leave in Portuguese legislation was established prior to Directive 2010/18, and has not been changed after.

This duration, which is the same in the public and the private sector, depends on whether the leave is taken on a full-time basis or on a part-time basis and also on whether the strict concept of ‘additional parental leave’ is included (thus meaning the leave that follows maternity leave and can be taken until the child is six years old – Article 51 of the LC) or the

extended notion of parental leave (thus including some of the period of the ‘special leave’ taken after ‘parental leave in the strict sense’.⁵⁰⁵

When taking into account the strict notion of parental leave, the total duration of the leave is three months (on a full-time basis) or twelve months (on a part-time basis), or a combination of both (Article 51 No. 1 LC). However, this period can be followed by the special leave to take care of children, which can go up to two years (or three years for the third child and four years for disabled children or children with a long-term illness⁵⁰⁶) – in successive periods of six months. So when considering these two leaves together it is possible to say that Portuguese legislation complies with Clause 1 No. 1 of the Agreement adopted by Directive 2010/18.

The maximum age of the child for entitlement to parental leave was also established before Directive 2010/18 (Article 51 No. 1 LC) and is fixed at the age of six, except for disabled children or children with a long-term illness, where the special leave can be taken until the child is twelve years old or even beyond that age, but on medical prescription (Article 53 No. 1 and 2). As regards adoption leave, the age limit of the child is fifteen (Article 44 No. 1).

As regards the maximum age requirement, Portuguese legislation does not comply with the last part of Clause 2 No. 1 of the Agreement adopted by Directive 2010/18.

The right to parental leave is an individual right of each parent and the law does not allow for the transfer of the right from one parent to the other (Article 51 No. 2 of the LC). This being the case, the right to retain a minimum period of the leave for the individual use of one of the parents (as prescribed in Clause 2 No. 2 of the Agreement adopted by Directive 2010/18) does not apply in national law.

Adoption leave is a separate category of leave, but it follows the model of maternity leave in the sense that it is granted under almost the same conditions and with the same duration of maternity leave (Article 44 LC). Parental leave in the strict sense is also a separate category of leave (Article 51) – the ‘additional parental leave’ – but in the broad sense it includes the ‘special leave to take care of children’ (Articles 52 and 53). None of these leaves raise any issues in relation to compliance with Pregnancy Directive 92/85.⁵⁰⁷

Surrogacy is not permitted in Portugal. This being the case, if the situation arises, all the rights attached to pregnancy and maternity, including the leaves would be recognised to the woman who gives birth.

5. Modalities of application (Clause 3)

Parental leave in the strict sense (meaning ‘additional parental leave’ – Article 51 LC) can be taken on a full-time or a part-time basis, or in a combined arrangement. When taken on a part-time basis, parental leave can go up to twelve months; when taken on a full-time basis, it can go up to three months. Special leave for the care of children (which extends parental leave) can be taken on a full-time basis (Articles 52 and 53).

Parental leave can be taken in a piecemeal way, for a maximum of three periods (Article 51 No. 2 of the LC).

Both these leaves are a right of the worker that prevails over the needs of the employer, so the leave cannot be refused by the employer. Also, to ensure that the leave is taken for the right purpose, the law forbids the worker to perform another professional activity incompatible with care, while on leave (Article 51 No. 4 LC).

The right to parental leave depends on a notice period of 30 days prior to the leave (Article 51 No. 5 LC, as regards parental leave in the strict sense, and Article 52 No. 6, as regards special leave). The request must be made in writing and must indicate the form and

⁵⁰⁵ Articles 40 No. 2, 51 No. 1 and 52 LC.

⁵⁰⁶ Articles 52 and 53 LC.

⁵⁰⁷ Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16 (1) of Directive 89/391/EEC) OJ L 348 of 28 November 1992, pp. 1-8.

the length of the leave required. There is no length of service requirement in order to benefit from parental leave, but only in order to benefit from the social security allowance attached to it (see below).

The only situation where the granting of parental leave may be postponed for reasons related to the operation of the organisation, is when both parents work for the same employer and both of them wish to enjoy the leave simultaneously. In this case, the employer can postpone the leave of one of the parents on the ground of imperative operational reasons of the business (Article 51 No. 3 LC). There are no special arrangements for small firms.

Finally, as regards the adjustment of the leave to the needs of parents of children with a disability or a long-term illness, the parents can take advantage of parental leave in the strict sense ('additional parental leave') (under Article 51 LC), and after this leave they can take the special leave for the care of children, in the specific extended form that the LC establishes for those cases in Article 53 (this leave can go up to four years instead of two, and the age limit of the child is increased to twelve, and, on medical indication, can exceed that age).

6. Adoption (Clause 4)

Adoption leave is granted for a period of 120 or 150 days (on the basis of 100 % or 80 % of the social security allowance, respectively) and on two conditions: the adopted child must be under fifteen; and the adopted child must not be the natural child of the husband/wife/companion of the adoptive parent.

As a specific measure, the candidate to become an adoptive parent has the right to three short leaves of absence for reasons linked to the adoption procedures (Article 45 LC).

7. Employment rights and non-discrimination (Clause 5)

The LC establishes specific protection against less favourable treatment on the grounds of parental leave, regarding the following issues:

- The dismissal of the worker during parental leave (but not during special leave) is presumed unlawful and it is up to the employer to prove that it had nothing to do with the application for or taking of the leave. Also before dismissing a worker in this situation, the employer must ask for the advice of the Commission for Equality in Employment (CITE) and if the opinion of the CITE is contrary to the dismissal, it must be decided by the Labour Court (Article 63).

While on leave, the employment contract of the worker is suspended.

- Workers benefitting from parental leave have the right to return to the same job or, if this is not possible, to an equivalent or similar job consistent with their employment contract or relationship (Article 65 No. 5).
- The rights acquired or in the process of being acquired by the worker on the date on which parental leave (again: not 'special leave') starts stand until the end of parental leave and the period of the leave is considered for all purposes, except pay, as effective working time (Article 65 No. 1). Therefore there also is continuity of the entitlements to social security cover under the different schemes, in particular healthcare, during the period of parental leave.
- Parental leave is not remunerated by the employer. The social security system provides for an allowance in the first three months of parental leave provided that the leave is taken immediately after the end of maternity leave by the other parent (Article 16 of Law No. 91/2009, of 9 April). This allowance is only granted if the worker has six months of contributions to the social security system (Article 25 of this Law) and the amount of the allowance is 25 % of the salary, with no upper limits.

8. Return to work (Clause 6)

When returning from parental leave, workers can request the following changes to their working hours and/or patterns for the purpose of reconciling work and family life:

- Working mothers that are breastfeeding (and also fathers in case of artificial nourishing of the baby) have the right to refuse night work, overtime work and flexible working-time arrangements, while breastfeeding or until the child is one year old (Articles 58, 59 and 60 LC);
- The parent of a disabled child or child with a long-term illness under one has the right to a reduction of working time of five hours per week to take care of the child (Article 54 LC);
- The worker with family responsibilities has the right to change to a part-time job, for two years (three years for a third child and four years for a disabled child or child with a long-term illness) provided the child is under twelve (or independently of that age limit for a disabled child or child with a long-term illness) – Article 55 LC;
- The worker with a child under twelve (or independently of that age limit for disabled children or children with a long-term illness) has the right to perform the job under flexible working-time arrangements (Article 56 LC).

With the exception of the rights related to breastfeeding, which cannot be refused on any ground, employers are in principle obliged to consider and respond to the requests related to the other rights, but in very strict situations they can refuse the employee's request (Article 57 LC)

As regards the requests for part-time or flexible working-time arrangements, they can be refused by the employer on the ground of compelling operational reasons or of the impossibility of replacing the employee, but this justification has to be considered valid by the CITE (Commission for Equality in Employment) and if the CITE does not agree, by the Court (Article 57 LC).

There are no special conditions to have access to these arrangements, such as a minimum period of employment with the same employer.

There are no specific mechanisms to promote that workers and employers maintain contact during the period of leave. As regards reintegration measures at the end of the leave, the employer is bound to grant adequate professional training to the employee in order to facilitate his/her reintegration in professional life when returning from leave (Article 61 LC).

9. Time off from work on grounds of force majeure (Clause 7)

Workers are entitled to unpaid time off from work on grounds of force majeure for urgent family reasons in case of sickness or accident of the child for a maximum of 30 days per year, or a maximum of fifteen days per year to take care of the child under twelve or over twelve, respectively, and, regardless of age, for a disabled or chronically ill child. These time limits can be exceeded in case of hospitalisation of the child and also in case of a second (or further) child (Article 49 LC).

However, this right is conditioned on the requirement that the absence of the worker is inevitable, in the sense that he/she cannot be replaced in the care for the child.

10. Final provisions (Clause 8)

Portuguese legislation is more favourable than Directive 2010/18 as regards parental leave when combining the various leaves and other measures described above, since the extent of the leaves largely exceeds the minimum of four months of parental leave prescribed in the Directive, also as regards some specific forms of assistance such as the grandparents leave, and finally as regards the control intervention of the CITE as regards dismissal and the request for part-time work for family reasons.

Still, in relation to parental leave (in the strict sense of 'additional parental leave') national legislation does not comply with the age requirement of the child, which is fixed at six rather than at eight, as stated in the Directive. On the other hand, although the LC formally complies with the Directive as regards parental leave, when considered in the broad sense indicated above (e.g. 'additional parental leave' and 'special leave to take care of children'), the fact that the Directive has not been formally transposed into national legislation does not

contribute to the transparency of the national system, since the reference limits of parental leave in the strict sense were kept at three months rather than at the new four months.

As to the other measures prescribed in the Directive, there are no compliance issues.

11. Sanctions (Article 2)

The sanctions prescribed by national law for the violations of the rules provided by the Directive are of two kinds: administrative fines, of several levels; right of the worker to damage compensation in civil terms and also, if he/she decides to terminate the employment contract, the right to damage compensation attached to resignation with just cause.

The amount of the administrative fines depends on the seriousness of the offence: the violation of provisions concerning pregnancy, maternity, paternity, and adoption leaves are considered very serious offences;⁵⁰⁸ the violation of the rights to parental leave, special leave and grandparents' leave are considered as serious offences;⁵⁰⁹ the violation of the right to time off for the purposes of medical examinations during pregnancy, breastfeeding, and force majeure, as well as the right to part-time or flexible working-time conditions, are also considered serious offences.⁵¹⁰

The exact amount of the applicable fines varies according to the size of the business, but a very serious offence has a minimum level of 20 x EUR 10 200, for very small businesses, and a maximum amount of 600 x EUR 10 200 for a large business (Article 554 of the LC). In the view of the expert, sanctions are dissuasive.

Apart from these sanctions, if the worker chooses to terminate the employment contract as a result of the violation of a right related to maternity, paternity or reconciliation of family and working life, he/she can do so and the resignation is considered justified, since it is grounded on the violation of the worker's rights (Article 394 LC). As a justified dismissal, this dismissal gives ground to a compensation, which is calculated at between 15 and 45 days of remuneration for each year of the employment contract (Article 396). Plus, if the worker is dismissed on these grounds, the dismissal is null and void and he/she has the right to be reinstated, but if he/she decides not go back, he/she has the right to accrued damage compensation (calculated at double the basis of 15 to 45 days per year of the employment contract).

12. Case law

There is no national case law relating to parental leave.

13. Practice and other relevant issues

In practice, parental leave in the strict sense (meaning the leave taken after maternity leave, designated 'additional parental leave') and special leave to take care of children are not frequently taken in Portugal.

We found no data regarding special leave. As to parental leave in the strict sense, the statistics available, published by the CITE,⁵¹¹ show that only 19.1 % of the mothers and 7.9 % of the fathers use this leave. Also, the number of fathers that share maternity leave by replacing the mother corresponds to only 21.5 % of the leaves taken by the mothers. Nonetheless, this last figure has increased significantly since 2005, when only 0.5 % of men shared maternity leave. In our opinion, the reason for the rare use of this leave is the low level of the social security allowance granted, together with the low level of salaries. In combination, these two factors make it very difficult for parents to take advantage of the leaves in practice.

⁵⁰⁸ Articles 40 No. 9, 41 No. 4, 42 No. 6, 43 No. 5, and 44 LC.

⁵⁰⁹ Articles 50 No.7, 51 No. 6, 52 No. 9, 53 No. 4 and 54 No. 7 LC.

⁵¹⁰ Articles 46 No. 6, 49 No. 7, 54 No. 7 55 No. 7 and 56 No. 5 LC.

⁵¹¹ These data are available at the CITE website under the title '*Licenças de Parentalidade*' and are reported until 2012. Available at: http://www.cite.gov.pt/assts_scratches/Dadosparentalidade.pdf, accessed 14 April 2014.

In contrast, an increasing number of fathers are taking paternity leave (72.2 % of the maternity leaves, as regards the compulsory period of ten days of such leave, and 61.6 % of the maternity leaves, as regards the non-compulsory period of ten more days), which is a significant increase compared to some years ago.

Anyway, these data show that all these leaves are predominantly taken by mothers.

Apart from all types of leave, a survey recently conducted and presented by the CITE⁵¹² indicates that women's time off from work is double the time off of men, but the absences of women are commonly justified by reasons related to the care for family dependents, while the absences of men are justified by other reasons. These data show that care responsibilities within the family are still shared in an unbalanced way between male and female workers.

ROMANIA – Iustina Ionescu

1. Context

The leaves aimed at facilitating the reconciliation of work, private and family life in Romania are: maternal risk leave, maternity leave, paternity leave, parental leave, leave to take care of a sick child or a child who has a handicap, paid days off for exceptional family events and unpaid leave to solve personal matters.

The maternal risk leave, the maternity leave, and the leave to take care of a sick child or a child who has a handicap are considered as part of the category of sick leaves: they require a medical certificate from the attending physician, are capped at a certain number of days, and an allowance is paid by the employer, who is reimbursed by the Unique National Social Health Insurance Fund (*Fondului național unic de asigurări sociale de sănătate*).⁵¹³ The maternity risk leave and the maternity leave may be taken only by pregnant women or women who are breastfeeding. Maternity risk leave is capped at 120 days.⁵¹⁴ Maternity leave is capped at 126 days.⁵¹⁵

Paternity leave is provided by law to men and consists of five or ten paid days off.⁵¹⁶ In addition, the Labour Code provides for the possibility that the employer offers paid days off for exceptional family events to both male and female employees, if so stipulated in the internal regulations or the collective agreement.⁵¹⁷ The Labour Code provides for the possibility that the employer offers the unpaid leave to solve personal matters for both male and female employees, if so stipulated in the internal regulations or the collective agreement.⁵¹⁸

Parental leave is a separate category of leave in relation to other forms of family leave, in particular maternity leave for mothers. Parental leave is a childcare leave available to parents after the birth of a child or after adoption and at least one month of this leave is provided on a non-transferable basis.⁵¹⁹ Parental leave is longer than other types of leaves: it may last until

⁵¹² This survey will soon be published.

⁵¹³ Emergency Ordinance No. 158/2005 on health insurance leaves and allowances (*Ordonanța de Urgență nr. 158 din 17 noiembrie 2005 privind concediile și indemnizațiile de asigurări sociale de sănătate*), published in Official Journal No. 1.074 of 29 November 2005.

⁵¹⁴ Emergency Ordinance No. 96/2003 regarding the protection of maternity at the workplace (*Ordonanța de Urgență nr. 96 din 14 octombrie 2003 privind protecția maternității la locurile de muncă*), Article 10.(2), published in Official Journal No. 750 of 27 October 2003.

⁵¹⁵ Emergency Ordinance No. 158/2005 on health insurance leaves and allowances (*Ordonanța de Urgență nr. 158 din 17 noiembrie 2005 privind concediile și indemnizațiile de asigurări sociale de sănătate*), Article 23, published in Official Journal No. 1.074 of 29 November 2005.

⁵¹⁶ Law No. 210/1999 on paternity leave (*Lege nr. 210 din 31 decembrie 1999 privind concediul paternal*), published in Official Journal No. 654 of 31 December 1999.

⁵¹⁷ Labour Code (*Legea nr. 53/2003 privind Codul muncii*), published in Official Journal No. 345 of 18 May 2011, Article 152.

⁵¹⁸ Labour Code Article 153.

⁵¹⁹ Emergency Ordinance No. 111/2010 on parental leave and the monthly allowance (*Ordonanța de Urgență nr. 111 din 8 decembrie 2010 privind concediul și indemnizația lunară pentru creșterea copiilor*), published in Official Journal No. 830 of 10 December 2010.

the child is one year or two years old. As opposed to other types of leave where the employer pays the allowance to the employee a is reimbursed by the fund that the employer pays for social security contributions of all employees, for parental leave the allowance is paid directly by the State to the person who is on parental leave. The monthly allowance is paid from the budget of the Ministry of Labour, Family, Social Protection and the Protection of the Elderly.⁵²⁰ It amounts to 85 % of the average income earned by the insured person in the twelve previous months and it is capped differently depending on the length of the parental leave: between EUR 135 (RON 600) and EUR 764 (RON 3 400) for parental leave until the child is one year old and between EUR 135 (RON 600) and EUR 270 (RON 1 200) for parental leave until the child is two years old.⁵²¹ If the parent returns to work before the end of the parental leave, he/she benefits from a monthly incentive of EUR 112 (RON 500) until the child reaches the age of two.⁵²²

2. Implementation of Directive 2010/18

The national legislation implementing Directive 2010/18 is the Government Emergency Ordinance No. 111/2010 regarding parental leave and the monthly allowance for parental leave.⁵²³ The Government proposed and adopted this legislation, which was later approved by Parliament.⁵²⁴ In the justification of the draft law for the approval of the Ordinance, the Government pointed out that the legislative measure was needed for the implementation of Directive 2010/18.⁵²⁵ Moreover, an important amendment of Government Emergency Ordinance No. 111/2010 was introduced by Government Emergency Ordinance No. 124/2011 amending legislation governing social assistance benefits: now, parental leave is non-transferable and at least one month should be taken by the other parent (usually, the father of the child).⁵²⁶ This new provision qualifying parental leave as a whole as ‘non-transferable’, and not only the one month that should be taken by the other parent, is contradictory to the provision from Article 18 of the same law. Article 18 introduces what is in essence the principle of transferability: when the parental leave is suspended for one parent (e.g. because this parent returns to work), the other parent may apply for parental leave if he/she qualifies for parental leave and the payment of the allowance can continue from the last day on which the leave of the first parent was suspended.⁵²⁷

Romania has not drawn up and published tables to illustrate the correlation between the Directive and transposition measures, according to Preamble 16.⁵²⁸ The Ministry of Labour, Family, Social Protection and the Elderly stated that a correlation table had been communicated to the European Commission, but it has not been made public.⁵²⁹

⁵²⁰ Emergency Ordinance No. 111/2010 on parental leave and the monthly allowance, Article 23(1).

⁵²¹ Emergency Ordinance No. 111/2010 on parental leave and the monthly allowance, Article 2.

⁵²² Emergency Ordinance No. 111/2010 on parental leave and the monthly allowance, Article 7.

⁵²³ Emergency Ordinance No. 111/2010 on parental leave and the monthly allowance (*Ordonanța de Urgență nr. 111 din 8 decembrie 2010 privind concediul și indemnizația lunară pentru creșterea copiilor*), published in Official Journal No. 830 of 10 December 2010.

⁵²⁴ Law No. 132/2011 on the approval of Emergency Ordinance No. 111/2010 on parental leave and the monthly allowance (*Lege nr. 132 din 27 iunie 2011 pentru aprobarea Ordonanței de urgență a Guvernului nr. 111/2010 privind concediul și indemnizația lunară pentru creșterea copiilor*), published in Official Journal No. 452 of 28 June 2011.

⁵²⁵ Romanian Government, *Justification for the approval of the Government Emergency Ordinance No. 111/2010*, pp. 3, 7, available at: <http://www.cdep.ro/proiecte/2011/000/80/1/em81.pdf>, accessed 4 April 2014.

⁵²⁶ Emergency Ordinance No. 124/2011 for the amendment of certain laws that regulate social assistance benefits (*Ordonanță de urgență nr. 124 din 27 decembrie 2011 pentru modificarea și completarea unor acte normative care reglementează acordarea de beneficii de asistență socială*), published in Official Journal No. 938 of 30 December 2011, Article IV.(12).

⁵²⁷ Emergency Ordinance No. 111/2010 on parental leave and the monthly allowance, Article 18.

⁵²⁸ *Consiliul Național pentru Combaterea Discriminării*, Response No. 1852 of 27 March 2014.

⁵²⁹ Ministry of Labour, Family, Social Protection and the Elderly, Response No. 967/DGAS/15.04.2014.

3. Purpose and scope (Clause 1)

National legislation is applicable to both the public and the private sector.

The scope of the national transposing legislation includes contracts of employment and employment relationships related to part-time workers, fixed-term contract workers and persons with a contract of employment or employment relationship with a temporary agency. One of the requirements for the parent to qualify for parental leave is that he/she has earned a monthly income (irrespective of the size of the income resulting from employment relations, independent activities, or agricultural work) in the previous twelve months before the birth of the child.⁵³⁰ In addition to these persons, other categories are also covered such as persons who receive unemployment benefits, students, employers who are on medical leave or on other type of leave, etc.⁵³¹ In the case of fixed-term contract workers who change contracts within twelve months, the law accepts a break of a maximum of three months between two fixed-term contracts, irrespective of the length of these contracts; the problem in practice is finding an employer willing to conclude a work contract with a woman who is pregnant.⁵³² For employment relationships with a temporary agency, the twelve-month requirement also applies.

4. Parental leave (Clause 2)

The total duration of parental leave is either one year or two years. Parents may opt for one of these two alternatives, for which the maximum limit of the allowance will differ (85 % of the average income up to EUR 764 (RON 3400) for a parental leave until the child is one year old and 85 % of the average income up to EUR 270 (RON 1200) for a parental leave until the child is two years old; see above). Moreover, at the end of the one-year paid parental leave, the parent may choose to also use the unpaid parental leave until the child is two years old.⁵³³

The duration of parental leave was revised with the entry into force of Directive 2010/18. Previously, legislation stipulated that parental leave could last until the child is two years old;⁵³⁴ now parents can choose a parental leave until the child is one year old or two years old, the difference being in the capped level of the allowance paid (see above). This provision discourages parents who earn more money from taking the longer parental leave. There is no difference in the duration of parental leave in the public sector and the private sector, and the age limit is the same for adopted children. When a parent applies for parental leave she/he has to opt for a one-year or two-year parental leave; an option that cannot be changed afterwards. From the length of her/his parental leave one month is taken out that must be taken by the other parent (if not taken, it is lost).⁵³⁵ Moreover, if during parental leave, the parent decides to return to work, the parental leave is suspended and the other parent may opt to take the rest of the parental leave chosen by the returning parent only if he/she qualifies for it. In this situation, the payment of the allowance will continue from the last day, when the leave of the first parent was suspended.⁵³⁶

Surrogacy is not legal in Romania.

⁵³⁰ Emergency Ordinance No. 111/2010 on parental leave and the monthly allowance, Article 2(1).

⁵³¹ Emergency Ordinance No. 111/2010 on parental leave and the monthly allowance, Article 2(5).

⁵³² Emergency Ordinance No. 111/2010 on parental leave and the monthly allowance, Article 2(5)(j).

⁵³³ Emergency Ordinance No. 111/2010 on parental leave and the monthly allowance, Article 6.

⁵³⁴ Emergency Ordinance No. 148/2005 regarding the support of the family for childcare (*Ordonanță de Urgență nr. 148 din 3 noiembrie 2005 privind susținerea familiei în vederea creșterii copilului*), published in Official Journal No. 1.008 of 14 November 2005.

⁵³⁵ Emergency Ordinance No. 111/2010 on parental leave and the monthly allowance (*Ordonanța de Urgență nr. 111 din 8 decembrie 2010 privind concediul și indemnizația lunară pentru creșterea copiilor*), Article 11, published in Official Journal No. 830 of 10 December 2010.

⁵³⁶ Emergency Ordinance No. 111/2010 on parental leave and the monthly allowance, Article 18.

5. Modalities of application (Clause 3)

Parental leave can only be full time. The law is very strict. If the parent starts earning any form of income resulting from an activity carried out during the parental leave (e.g. from intellectual property), the allowance will be suspended. Afterwards, the rest of the parental leave may be resumed or the other parent may take the rest of the parental leave if he/she qualifies for parental leave.⁵³⁷

There is no notice period stipulated by law for the employee to inform the employer about the parental leave. In addition, there is no length of work and/or length of service requirement as such in order to benefit from parental leave. Indirectly, there is the requirement that in the twelve months prior to the birth of the child, the parents have earned a taxable income resulting from employment relations, independent activities, or agricultural work, but they may also fall under one of the categories stipulated by law, for example persons who receive unemployment benefits, students, employers who are on medical leave or on other type of leave, etc.⁵³⁸

In case of successive fixed-term contracts with the same employer, the sum of these contracts is taken into account for the purpose of calculating the qualifying period. Moreover, the law accepts a three-month break between two fixed-term contracts.⁵³⁹

There are no situations stipulated in the law where the granting of parental leave may be postponed for justifiable reasons related to the operation of the organisation, nor are there any special arrangements for small firms.

The same rules and conditions for access to parental leave apply for all parents, irrespective of whether the child has a disability. The only differences are that the parental leave is longer for parents of children with a disability (up to three years) and the allowance is 85% of the income, between EUR 135 (RON 600) and EUR 764 (RON 3 400);⁵⁴⁰ after the three-year parental leave, the parent of a child with disabilities may apply for an extension up until the child is seven years old, with a monthly allowance of EUR 100 (RON 450).⁵⁴¹ Parents of children who have a long-term illness do not benefit from this extended parental leave, only parents of children who have been evaluated by the authorities as having disabilities.

6. Adoption (Clause 4)

There are no additional measures to address the specific needs of adoptive parents.

7. Employment rights and non-discrimination (Clause 5)

There are provisions to protect workers against less favourable treatment or dismissal on the grounds of an application for, or the taking of, parental leave. Specifically, the law forbids any dismissal of employees who are on parental leave, are being paid the incentive for coming back to work before the child is two years old, or are in the six-month period after returning to work from parental leave.⁵⁴² The only exception to this rule is when the company has been declared insolvent or bankrupt.⁵⁴³

The law grants a person taking parental leave the right to return to the same job or, if this is not possible, to an equivalent or similar job consistent with their employment contract or relationship. This right is not stipulated in the parental leave law, but in Law 202/2002

⁵³⁷ Emergency Ordinance No. 111/2010 on parental leave and the monthly allowance, Article 16(2)(i).

⁵³⁸ Emergency Ordinance No. 111/2010 on parental leave and the monthly allowance, Article 2(1) and 2(5).

⁵³⁹ Emergency Ordinance No. 111/2010 on parental leave and the monthly allowance, Article 2(5)(j).

⁵⁴⁰ Emergency Ordinance No. 111/2010 on parental leave and the monthly allowance, Article 2.(1).a.

⁵⁴¹ Emergency Ordinance No. 111/2010 on parental leave and the monthly allowance, Article 31.

⁵⁴² Emergency Ordinance No. 111/2010 on parental leave and the monthly allowance, Article 25(2).

⁵⁴³ Emergency Ordinance No. 111/2010 on parental leave and the monthly allowance, Article 25(3).

regarding equal opportunities between men and women.⁵⁴⁴ At the same time, it is Law 202/2002 regarding equal opportunities between men and women that stipulates that until the end of the parental leave workers maintain the rights acquired or in the process of being acquired by them on the date on which parental leave starts.⁵⁴⁵

The employment contract is suspended for the period of the parental leave,⁵⁴⁶ however, there is continuity of the entitlements to social security cover under the different schemes, in particular healthcare and pension, during the period of parental leave; the contributions are paid for the employee not by the employer but by the State.⁵⁴⁷ However, the points assigned for the contribution to the social security fund during parental leave do not reflect the person's actual income (only 25 % of the medium income at the national level registered during leave, irrespective of the person's actual income).⁵⁴⁸ This disadvantages women, who more frequently take parental leave than men. Parental leave is not remunerated by the employer. A monthly allowance is paid to all parents who are on parental leave, from the budget of the Ministry of Labour, Family, Social Protection and the Protection of the Elderly.⁵⁴⁹ It amounts to 85 % of the average income earned by the insured person in the previous twelve months and is capped differently depending on the length of the parental leave – between EUR 135 (RON 600) and EUR 764 (RON 3400) for a parental leave until the child is one year old and between EUR 135 (RON 600) and EUR 270 (RON 1200) for a parental leave until the child is two years old.⁵⁵⁰

8. Return to work (Clause 6)

There is no legal provision stipulating a right for workers returning from parental leave to request changes to their working hours and/or patterns for a set period of time. All requests from employees are left to free negotiation with their employer and there are no guarantees stipulated by law for either of them. Only women who are breastfeeding their child until the age of one are entitled to take two breaks every day from work in order to breastfeed the child or they are entitled to shorten their work programme by two hours every day.⁵⁵¹

There are no mechanisms to promote/ensure that workers and employers maintain contact during the period of leave and make arrangements for any appropriate reintegration measures.

9. Time off from work on grounds of force majeure (Clause 7)

Workers are not entitled to time off from work on grounds of force majeure for urgent family reasons in case of sickness or accident. Nevertheless, the Labour Code provides for the possibility that the employer offers paid days off for exceptional family events or unpaid leave to solve personal matters, if stipulated in the internal regulations or the collective agreement.⁵⁵² Since 2011, in Romania a national collective agreement is no longer in force; there are only collective agreements in certain fields of activity, especially in the public sector. These collective agreements detail the conditions of access and the amount of time per

⁵⁴⁴ Law No. 202/2002 regarding equal opportunities between men and women (*Lege nr.202 din 19 aprilie 2002 privind egalitatea de șanse și de tratament între femei și bărbați*), republished in Official Journal No. 326 of 5 June 2013, Article 10(8).

⁵⁴⁵ Law No. 202/2002 regarding equal opportunities between men and women, Article 10(8).

⁵⁴⁶ Labour Code (Article 51(1)(b)).

⁵⁴⁷ Emergency Ordinance No. 111/2010 on parental leave and the monthly allowance, Articles 21(1), 22(1), and 23.

⁵⁴⁸ Law 411/2004 regarding pension funds managed by private entities (*Legea nr.411/2004 privind fondurile de pensii administrate privat*), Article 97(1)(b).

⁵⁴⁹ Emergency Ordinance No. 111/2010 on parental leave and the monthly allowance, Article 23(1).

⁵⁵⁰ Emergency Ordinance No. 111/2010 on parental leave and the monthly allowance, Article 2.

⁵⁵¹ Government Emergency Ordinance No. 96/2003 regarding the protection of maternity at the workplace (*Ordonanța de Urgență nr.96 din 14 octombrie 2003 privind protecția maternității la locurile de muncă*), published in Official Monitor No. 750 of 27 October 2003.

⁵⁵² Labour Code Articles 152-153.

year or per case. For example, the collective agreement in the car industry stipulates a maximum of 30 days per year for unpaid leave if the activity allows it.⁵⁵³

10. Final provisions (Clause 8)

In the view of the expert, national legislation applies more favourable provisions with regard to the length of parental leave and the fact that an allowance for parental leave is paid from the budget of the Ministry of Labour, Family, Social Protection and the Protection of the Elderly to all workers that qualify for it.

11. Sanctions (Article 2)

Government Emergency Ordinance No. 111/2010 on parental leave and the monthly allowance stipulates that the violation of certain obligations stipulated by law is punishable by an administrative fine of between EUR 225 (RON 1 000) and EUR 562 (RON 2 500).⁵⁵⁴ This also covers violations of the legal protections regarding dismissal as mentioned above. The aforementioned sanctions are decided and imposed by the Ministry of Labour, Family, Social Protection and the Protection of the Elderly. In the view of the expert, the level of the administrative fine is too low. Therefore, it does not fulfil the requirements of proportionality and dissuasiveness. Moreover, the level of the administrative fine is significantly lower compared to those stipulated in Law No. 202/2002 regarding equal opportunities between men and women (between EUR 674 (RON 3 000) and EUR 22 471 (RON 100 000)) and Government Ordinance No. 137/2000 regarding the prevention and sanctioning of all forms of discrimination (EUR 225 (RON 1 000) and EUR 6 742 (RON 30 000)).

There is in fact double sanctioning of the same facts in two different laws: Government Emergency Ordinance No. 111/2010 (Articles 26(1) and 25) and Law No. 202/2002 (Articles 37(1) and 10(2)). This creates problems because the level of these administrative fines differs, as shown above. Moreover, the National Council for Combating Discrimination in its recent case law has started to decide that the dismissal of women immediately after returning from parental leave constitutes direct discrimination on the ground of sex, in violation with Articles 2(1) and 7(a) of the Government Ordinance No. 137/2000 regarding the prevention and sanctioning of all forms of discrimination.⁵⁵⁵ Some of the recent CNCD decisions solved this way have been overturned by the Court of Appeal of Bucharest. Nevertheless, the judgments are not final (for more details, see Section 12 below).

12. Case law

There are two judgments of the Court of Appeal of Bucharest that overturned recent decisions of the CNCD finding that the dismissal of women immediately after returning from parental leave constitutes discrimination on the ground of sex⁵⁵⁶ and one judgment overturning the CNCD decision finding that the change of job duties due to parental leave constitutes discrimination on the ground of sex.⁵⁵⁷ The judgments are not final. In essence, in all three decisions, the Court of Appeal of Bucharest adopted a very formalistic view with respect to the competence of the CNCD. Specifically, although it did not find that the CNCD was not competent to examine the respective cases, the Court stated that the CNCD is not competent to apply the provisions of Government Emergency Ordinance No. 111/2010 and Law No.

⁵⁵³ Collective Agreement No. 59493/2012 at the level of the group of companies in the car industry for the years 2013-2014 (*Contract colectiv de muncă nr. 59.493 din 20 decembrie 2012 la nivelul grupului de unități din sectorul de activitate construcții de mașini pe anii 2013-2014*), published in Official Journal, Part V, No. 4 of 24 January 2013.

⁵⁵⁴ Emergency Ordinance No. 111/2010 on parental leave and the monthly allowance, Article 26.

⁵⁵⁵ The most recent CNCD Decision in this regard communicated to us is Decision No. 680 of 20 November 2013. See CNCD, Response No. 1852 of 27 March 2014.

⁵⁵⁶ Court of Appeal of Bucharest, Judgments Nos 3918 of 9 December 2013 and 1712 of 27 May 2013.

⁵⁵⁷ Court of Appeal of Bucharest, Judgment No. 4585 of 24 July 2012.

202/2002, only Government Ordinance No. 137/2000. This strict interpretation led the Court to apply a strict definition of discrimination on the ground of sex. In particular, it found that the ground ‘sex’ was not applicable because there was no evidence that the employees were treated that way because they were women.

The expert is not aware of any national case law relating to parental, adoption or time-off leave which provides more favourable rights than the provisions of the Directive, existing national provisions and/or case law of the CJEU.

13. Practice and other relevant issues

The types of leave described in Section 1 are actually used in practice. They are more frequently taken by mothers. The Ministry of Labour, Family, Social Protection and the Protection of the Elderly publishes sex-disaggregated statistics on parental leave. According to these statistics, the percentage of men taking parental leave is around 15-18 % and it is more widespread in the rural areas than in the urban areas.⁵⁵⁸

There are no positive action measures at national level to promote a more balanced share of family responsibilities between both parents in relation to the leaves mentioned above.

The expert is not aware of any relevant gaps at national level.

SLOVAKIA – Zuzana Magurová

1. Context

Maternity, paternity and parental leave are defined by law, namely the Labour Code⁵⁵⁹ (*Zákoník práce*) in Articles 166-169.⁵⁶⁰

In connection with childbirth and the care of a newborn child, female employees are entitled to maternity leave. The beginning of maternity leave for a woman is normally determined by a physician and starts at childbirth.. Male employees are entitled to paternity leave in order to be able to care for the new-born child and the beginning of this leave is normally determined by the fact that a father starts to care for a new-born baby. In order to care for a child, female employees are entitled to parental leave after the end of maternity leave. Male employees have also a right to parental leave after the end of paternity leave. Parental leave is thus available to both mothers and fathers. The Labour Code does not define the term ‘leave of adoptive parents’, although it guarantees adoptive parents the same right to claim for maternity, paternity and parental leave as biological parents.

The legislation does not mention paternity leave, only that leave is available for the father in order to care for the new-born child.

2. Implementation of Directive 2010/18

The Directive was mainly transposed during the years 2010 and 2011, when the following acts were amended:

- Act No. 571/2009 Coll. on Parental Allowance;
- Act No. 125/2006 Coll. on Labour Inspection;
- Act No. 311/2001 Coll. Labour Code;

⁵⁵⁸ MLFSPE, Statistical Bulletin. Social Assistance. 2010, 2011, 2012, 2013, available at <http://www.mmuncii.ro/j33/index.php/ro/transparenta/statistici/buletin-statistic>, accessed 6 June 2014.

⁵⁵⁹ Act No. 311/2001 Coll. Labour Code, as amended.

⁵⁶⁰ However, there is no term meaning paternity leave in Slovakian legislation. In this report, leave that is exclusively available for the father who takes care for the new-born child is nevertheless called paternity leave, in order to distinguish this leave from parental leave. Slovakian translations: maternity leave: *materská dovolenka*, paternity leave: *otcovská dovolenka*, parental leave: *rodičovská dovolenka*.

- Act No. 73/1998 Coll. on the civil service, covering members of the Police Force, the Slovak Intelligence Service, the Prison Wardens and Judiciary Guards Corps of the Slovak Republic, and the Railway Police;
- Act No. 200/1998 Coll. on the civil service, covering Customs Officers;
- Act No. 315/2001 Coll. on the Fire Fighting and Rescue Corps;
- Act No. 365/2004 Coll. on equal treatment in some areas and on protection against discrimination and amending certain acts (Antidiscrimination Act);
- Act No. 346/2005 Coll. on the civil service, covering professional soldiers in the Armed Forces of the Slovak Republic; and
- Act No. 400/2009 Coll. on the civil service and amending and supplementing certain acts, as amended by Act no. 151/2010 Coll.

All these draft amendments contained, amongst other things, the list of transposed directives and tables of conformity showing those articles of acts to which individual articles of the Directive had been transposed.

Generally, the social partners include regulations concerning maternity, paternity, and parental leave in collective agreements in accordance with regulations contained in the Labour Code.

3. Purpose and scope (Clause 1)

The provisions on parental leave contained in the Labour Code apply to both the private and public sector, the civil service, and to the exercise of public service. They also apply to part-time employment contracts and contracts for a definite period and to an employment relationship with a temporary agency.

4. Parental leave (Clause 2)

Parental leave must be allowed until the child turns three and, if the child is in ill health, until the child turns six. The law does not regulate the length of parental leave, but determines the point in time of its termination (day the child turns three (six, if in ill health)).

Parental leave is the time off from work taken for the purposes of child care, during which a woman or man is entitled to a parental allowance which is a state social benefit. The law does not regulate the length of parental leave, but determines the point in time of its termination by the age of the child. Entitlement to parental leave is a personal non-transferable right of each parent. The child may be taken care of by the mother or father or even by both at once. Parental leave is provided for the extent required by the parent, but at least for a period of one month. If both parents apply for parental leave, only one of them will be entitled to parental allowance. According to the Labour Code the second spouse/parent is entitled to parental leave in the form of unpaid time off from work with a guarantee of maintenance of employment.

There is no difference in the duration of parental leave in the public sector and the private sector.

As to the consequences of childbirth by surrogacy, in relation to parental leave, under the Family Code the woman who gives birth to the child is considered to be the mother. The right to parental leave can also be granted, in addition to a biological parent, to the person who takes care of the child; or to adoptive parents.

5. Modalities of application (Clause 3)

Parental leave is a full-time leave. There is no possibility to take parental leave part-time. There are no work or length of service requirements in order to benefit from parental leave. There is no possibility that granting parental leave may be postponed for justifiable reasons related to the operation of the employing organisation, nor are there any special arrangements for small firms.

An employee has the duty to inform his or her employer in writing at least one month in advance before the estimated start and termination of parental leave, as well as any changes concerning the start, suspension, and termination of such leave.⁵⁶¹

The Labour Code, in effect since 1 September 2011, provides for the possibility to claim the unused part of parental leave until the age of five in the case of a healthy child, and until the age of eight in the case of a child with long-term health needs requiring special care. This is provided the employer and the employee agree to this possibility. Therefore, the total length of parental leave remains unchanged. The part of parental leave that was not used (but could have been used until the age of three of a healthy child, and until the age of six of a child with long-term health needs requiring special care), may be postponed until when a healthy child reaches the age of five, or when a child with long-term health needs reaches the age of eight. The age limits are the same for adopted children.

6. Adoption (Clause 4)

In addition to biological parents, the claim for parental leave is granted to persons (of both sexes) who take in a child in so-called ‘substitute care’ (i.e. adoption, foster care or care in the case of the death of the child’s mother). The parental leave in these cases starts from the day when the child is taken into care, and lasts for a maximum of 28 weeks (31 weeks in case of a single parent, and 37 weeks in the case of caring for two or more children). Parental leave for the reason of extending⁵⁶² child care is granted at the most until the day when a healthy child attains the age of 3 or when a child with long-term health needs requiring special care attains the age of 6.

7. Employment rights and non-discrimination (Clause 5)

According to the Labour Code, women and men have the right to equal treatment, as regards the access to employment, remuneration and careers, training and working conditions. Pregnant women, mothers until the end of the ninth month after childbirth and nursing mothers have the right to working conditions that will protect their biological condition in relation to pregnancy, childbirth, childcare after the birth and their special relationship with the newborn child.⁵⁶³

The employer cannot give notice to an employee during the period of her pregnancy, to a female employee who is on maternity leave, to a female employee or a male employee who is on parental leave, or to a single female employee or a single male employee who is taking care of a child under the age of three.⁵⁶⁴ This provision does not apply if the employer or its business unit is being closed down or relocated and the employment relationship terminates on the expiration of the notice period, which starts on the first day of the calendar month following the delivery of the notice and ends on the last day of that month. In the event of notice given on the ground of closing down or relocation of the employer or its business unit, an employee has the right before the start of the notice period to ask the employer for termination of the employment relationship by agreement. The employer is obliged to grant such a request. In this case the employee will be entitled to a severance allowance equal to not less than his/her average monthly earnings multiplied by the number of months that a notice period would last.

Legal regulation of the conditions of return from parental leave was completed and harmonised with effect from 1 April 2011.

If an employee returns to work after the termination of parental leave, the employer is obliged to assign them to their initial working position and workplace. If such an assignment is not possible, the employer is obliged to assign the employee to other work corresponding

⁵⁶¹ Act No. 311/2001 Coll. Labour Code, Article 166 Section 3.

⁵⁶² According to the law, to extending the care for the child’, male and female workers are entitled to parental leave.

⁵⁶³ Act No. 311/2001 Coll. Labour Code, Fundamental Principles, Article 6.

⁵⁶⁴ Act No. 311/2001 Coll. Labour Code, Article 64.

with the employment contract. The employer is obliged to assign the employee to a working position and workplace under conditions that are no less favourable for them than the conditions valid at the time when he or she left for maternity or parental leave. The employee is also entitled to benefits from each improvement of working conditions to which he or she would have been entitled if he or she had not taken parental leave. These rights will be exercised to include any changes resulting from legal regulations, collective agreement or usual procedures imposed on the employer.

During parental leave, a parent is entitled to parental allowance which is provided for under the Act on Parental Allowance (*Zákon o rodičovskom príspevku*)⁵⁶⁵ by the state to the beneficiary to ensure proper care of the child. Parental allowance is a State social benefit, the amount of which does not depend on any contributions paid to the social security scheme. It amounts (per month) to EUR 203.20 for one child, to EUR 254 for twins, and to EUR 304.80 for triplets or more. During the period of parental leave, the parent discontinues contributions to sickness, pension, unemployment and health insurance because the State pays all insurance contributions for her/him.

8. Return to work (Clause 6)

For women and men, working conditions must be secured that will enable them to perform their social tasks in the upbringing of children and their care.⁵⁶⁶ To these people the legislation therefore grants special protection, which is manifested in: working conditions; adaptation of working hours; prohibition of the termination of an employment relationship within a protected period; maternity or parental leave; and childcare, to be found in various provisions of the Labour Code. If a woman or a man continuously caring for a child younger than 15 years of age requests a reduction in working time or other arrangement to the fixed weekly working time, the employer must accommodate their request so long as it is not prevented by substantive operational reasons. Workers returning from parental leave can request changes to their working hours without any preconditions (e.g. minimum period of employment with the same employer).

There are no available mechanisms to help workers and employers to maintain contact during the period of leave or to make arrangements for any appropriate reintegration measures.

9. Time off from work on grounds of force majeure (Clause 7)

The employer is obliged to excuse the absence of an employee from work during maternity, paternity and parental leave, which is included in Article 141 of the Labour Code as one of the substantive personal obstacles to work. This also applies during the care of a child below ten years of age, who for significant reasons cannot be placed in an educational centre or school that otherwise cares for the child; or if the person taking care of the child falls ill or is placed in quarantine, or undergoes treatment in a health care facility that cannot occur outside his or her working hours.⁵⁶⁷ For this time off, the employee is not entitled to be paid by employer, because he/she is entitled for allowance under the Social Insurance Act.. There is no a limit to the amount of times per year an employee can take this time off.

The employer is obliged to provide the employee paid time off work to cover preventive medical checks related to pregnancy, if the examination or treatment cannot take place outside working hours. Time off from work will also be provided for the transport of the mother of the employee's newborn child to and from the maternity hospital.

The employer is obliged to provide its employee with time off from work, when the employee is accompanying:

⁵⁶⁵ Act No. 571/2009 Coll. on Parental Allowance, as amended.

⁵⁶⁶ This is one of the general 'fundamental provisions' contained in Article 6 of the Labour Code, irrespective of whether they have taken up any leave.

⁵⁶⁷ All circumstances including maternity and parental leave are regarded as 'important personal obstacles to work'.

- (i) a family member to a medical facility for examinations or treatment upon sudden disease or accident, and also for planned examinations and treatment. Wage compensation is for a maximum of seven days per calendar year.
- (ii) A handicapped child to a social care facility or special school. In this situation, wage compensation is provided for a maximum of ten days per calendar year.

10. Final provisions (Clause 8)

Slovak legislation complies with the Directive. However, there is still a great deal of room for improvement from a legislative point of view, which could contribute to achieving gender equality in practice. One of the obstacles is the practical impossibility for both parents to take 'paid' paternal leave at the same time.⁵⁶⁸

11. Sanctions (Article 2)

The verification of the implementation of the Directive is the responsibility of the labour inspectorate,⁵⁶⁹ and comprises of *inter alia*, the supervision of compliance with labour laws, legal regulations stipulating civil servant relationships, and obligations resulting from collective agreements. The inspectorate derives the responsibility for dealing with violations of these regulations and breaches of obligations under collective agreements, and has the right to impose a fine of up to EUR 100 000.

The regulations contained in the Act on Labour Inspection has the potential to fulfil the requirement of effectiveness, but no cases where the inspectorate actually imposed a fine for the violation of rules laid down by the Directive are known.

There is the possibility of going to court, but there is no information available concerning any such case.

12. Case law

There is no information available on decisions of the courts.

13. Practice and other relevant issues

All types of leave set out in Section 1 of this report are used in practice. Parental leave is most often used by mothers. In 2013, the Central Office of Labour, Social Affairs and Family recorded a total of 142 904 recipients of parental allowance, of which only 3 193 (2.23 %) were men. In 2012, the respective figures were the following: 3 131 (2.2 %) men out of 142 274 recipients; in 2011, 3 235 (2.28 %) men out of 141 846 recipients; and in 2010, 2 889 (2.08 %) men out of 138 830 recipients.⁵⁷⁰

Positive measures for the support of a more balanced division of parental responsibility have not been taken.

13. Practice and other relevant issues

All types of leave set out in section 1 above are used in practice. Such leave is most often used by mothers.

Positive measures for the support of a more balanced division of parental responsibility have not been taken.

⁵⁶⁸ If both parents apply for parental leave, only one of them will be entitled to parental allowance, the amount of which is insufficient to cover the living costs of both parents and the child.

⁵⁶⁹ Act No. 125/2006 Coll. on Labour Inspection, as amended.

⁵⁷⁰ Synthesis Report on Gender Equality in Slovakia in 2013, available at: <http://www.osveta.mil.sk/data/files/3966.pdf>, accessed 30 October 2014.

SLOVENIA – *Tanja Koderman Sever*

1. Context

Leaves aimed at facilitating the reconciliation of work, private and family life, conditions for obtaining them, their duration and the amount of benefits are specified in the Parental Protection and Family Benefits Act (hereinafter the PPFBA-1).⁵⁷¹

According to the newly adopted PPFBA-1 there are three different types of leaves: maternity leave, parental leave and paternity leave. Female workers are entitled to a maternity leave of 105 days, of which fifteen days are compulsory.⁵⁷² Furthermore, each of the parents has a right to a parental leave of 130 days, whereby a mother may transfer 100 days to the father and 30 days are non-transferable; and a father may transfer all 130 days to the mother. This can be exercised directly after the end of maternity leave to take care of the child.⁵⁷³ Paternity leave of 30 days is granted to the father on a non-transferable basis.⁵⁷⁴ The adoptive parent or the person to whom the child has been entrusted for raising and nursing for the purpose of adoption are entitled to the parental leave in the same duration as birth parents until the child finishes the first year of primary school. Adoption leave therefore is not a separate category of leave but has been combined with parental leave.⁵⁷⁵ During these periods of leave insured persons are entitled to benefits which are equal to 100 % (maternity benefits) or 90 % (parental benefits and paternity benefits) of their average salary over the twelve months immediately prior to the date on which the benefits were claimed.

2. Implementation of Directive 2010/18

Directive 2010/18 was implemented with the adoption of the PPFBA-1 in April 2014. However, Slovenia has not yet drawn up or published tables to illustrate the correlation between the Directive and transposition measures.

3. Purpose and scope (Clause 1)

According to the PPFBA-1, pregnancy and maternity rights apply equally to all employees if they are insured according to the PPFBA-1. There is no distinction between state and private employees or regarding the size of the employer. Furthermore, part-time workers, fixed-term contract workers or persons with a contract of employment or employment relationship with a temporary agency are able to access maternity, paternity and parental rights in the same manner as all other insured persons if they are included in the system of insurance for parental protection.

4. Parental leave (Clause 2)

According to the newly adopted PPFBA-1, which was revised in order to implement Directive 2010/18, the duration of parental leave is 260 days, which are distributed between the parents. This means that each of the parents has an individual right to a parental leave of 130 days, where the mother may transfer 100 days to the father and 30 days are non-transferable; the father may transfer all 130 days to the mother. The parental leave may be extended by 90 days for twins; by 90 days for each subsequent child when several children are born alive at the same time; by as many days as the pregnancy was shorter than 260 days in case of a premature child; and by 90 days on the basis of the opinion delivered by the medical board in the case of the birth of a child in need of special care.

⁵⁷¹ Parental Care and Family Benefits Act, Official Gazette of the Republic of Slovenia, No. 26/2014.

⁵⁷² Articles 19 and 21 of the PPFBA-1.

⁵⁷³ Articles 29, 33, 34 and 36 of the PPFBA-1.

⁵⁷⁴ Articles 25 and 27 of the PPFBA-1.

⁵⁷⁵ Article 39 of the PPFBA-1.

Parents are entitled to parental leave directly after the end of maternity leave in order to take care of the child. However, according to the PPFBA-1, part of the parental leave with a maximum of 75 days can be transferred and used before the child finishes the first year of primary school.

There is no difference between the public and the private sector regarding the duration of parental leave.

Parental leave in case of surrogacy is not available.

5. Modalities of application (Clause 3)

According to the PPFBA-1 parental leave can be taken in a continuous series of days on a full-time or a part-time basis. The time schedule for partial absence from work shall be agreed by the parents between themselves and their employer. If an agreement cannot be reached, the right to the use of the leave shall be decided by the Centre for Social Work, where it shall consider the child's interests. An employee is obliged to inform the employer of his or her intention to use parental leave 30 days prior to the envisaged commencement of the leave. Parents who have transferred part of their parental leave may use it in a continuous series in the form of full or partial absence from work, not more than twice a year for a period of at least fifteen calendar days, until a child finishes the first year of primary school. Parents do not have to inform employers prior to the commencement of the transferred leave because the written agreement, concluded 30 days prior to the expiry of maternity leave, has already been submitted to them. But they have to inform their employer of the change of the use of parental leave within three days after emergence of the reason to change the written agreement.⁵⁷⁶

In order to be entitled to parental benefits the relevant persons need to be insured pursuant to the PPFBA-1 before the day of commencement of the individual type of parental leave. If they are no longer insured but were previously insured for at least twelve months in the past three years prior to exercising the right to parental benefits, they are entitled to parental benefits as well. This rule also applies to successive fixed-term contracts with the same employer regarding the sum taken into account for the purpose of calculating the qualifying period.

The PPFBA-1 does not provide for situations where the granting of parental leave may be postponed for justifiable reasons related to the operation of the organisation. However, the time schedule for partial absence from work may be agreed between the employers and the parents.

There are no special arrangements regarding the size of the employer.

There are some special rules for access and modalities of application of parental leave to the needs of parents of children with a disability or a long-term illness. In the case of the birth of a child who needs special care, parental leave may be extended by 90 days on the basis of the opinion delivered by the medical board. Parental leave may also be extended by 90 days if the child is established to suffer from a disturbance in the physical or mental development or a long-term severe illness after full parental leave has been used and the child has not yet reached the age of 18 months. However, the parents are not entitled to any parental leave if the child has been given away to be raised and nursed by another person or has been placed in an institution.⁵⁷⁷

6. Adoption (Clause 4)

According to the PPFBA-1 the adoptive parent or the person to whom the child has been entrusted for raising and nursing for the purpose of adoption are entitled to parental leave in the same duration as birth parents until the child finishes the first year of primary school. Adoption leave is no longer a separate category of leave but has been combined with parental

⁵⁷⁶ Articles 34, 36 and 37 of the PPFBA-1.

⁵⁷⁷ This includes both adoption, and situations where a child has been raised by another person without being adopted. Article 29 of the PPFBA-1.

leave. The adoptive parent may start using the parental leave at the latest 30 days after the child is placed in the family for the purpose of adoption and must inform the employer of the use of parental leave not later than three days after the reason for the use of it arises.

7. Employment rights and non-discrimination (Clause 5)

The Employment Relationship Act (hereinafter the ERA)⁵⁷⁸ protects workers against less favourable treatment in connection with pregnancy or parental leave and it refers to victimisation in relation to pregnancy, maternity and parental rights.⁵⁷⁹

As regards dismissals related to pregnancy, maternity and related forms of leaves, the ERA includes among the unlawful reasons for the ordinary termination of an employment contract absence from work due to maternity leave, parental leave and paternity leave and bringing an action or participation in proceedings against the employer due to an alleged violation of the contract and other obligations arising from employment before arbitration, judicial or administrative authorities.⁵⁸⁰ Furthermore, the dismissal of women is absolutely prohibited during the period of pregnancy and during the time that they are breastfeeding. The dismissal of parents is also absolutely prohibited during the period that they are on parental leave in the form of full absence from work and for one month after returning to work.⁵⁸¹

During the exercise of rights regarding maternity leave, parental leave and paternity leave, workers remain employed under the terms of the existing employment contract. When receiving parental benefits, persons entitled to them are covered by parental protection insurance at rates applicable to social security.⁵⁸²

Upon completion of parental leave, workers have the right to return to the same job or if this is not possible to an equivalent or similar job consistent with their employment contract. Rights acquired or in the process of being acquired by the worker on the date on which parental leave starts are maintained as they stand until the end of parental leave. Immediately after the worker returns to work, he/she may exercise acquired rights or rights that have improved during the worker's absence from work, if he/she could not exercise them during his/her absence.⁵⁸³

All workers on parental leave, irrespective of the sector, are entitled to parental benefits during parental leave. According to the Public Finance Balance Act (hereinafter the PFBA), which was adopted in May 2012 in the context of cost-cutting measures, parental benefits no longer equal 100 % of the average salary over the twelve months prior to the date on which the benefits were claimed, but amount to 90 % of the above aforementioned basis for the calculation of parental benefits. In addition, the amount of parental benefits may not be higher than two and a half times the average monthly salary in the Republic of Slovenia. Parental benefits are not paid by the employer, but by the Ministry of Labour, Family, Social Affairs and Equal Opportunities.

8. Return to work (Clause 6)

One of the parents who nurses and cares for the child until its third birthday shall have the right to part-time work. A parent who nurses and cares for two children may extend this right until the younger child finishes the first year of primary school.⁵⁸⁴ However, one year of exercising the right to part-time work is granted to each of the parents on a non-transferable basis. In these cases, the employer ensures the worker the right to the salary on the basis of

⁵⁷⁸ Employment Relationship Act, Official Gazette of the Republic of Slovenia, No. 22/2013.

⁵⁷⁹ Article 6 of the ERA.

⁵⁸⁰ Article 90 of the ERA.

⁵⁸¹ Article 115 of the ERA.

⁵⁸² Contributions for parental protection shall be paid by insured persons and employers. They shall be calculated from the basis for the payment of contributions, which equals the basis from which insured persons pay contributions for compulsory pension and disability insurance.

⁵⁸³ Article 186 of the ERA.

⁵⁸⁴ Article 50 of the PPFBA-1.

actual working hours, while the Republic of Slovenia ensures payment of social security contributions for the difference with full-time work, on the basis of a proportional share of the minimum salary. Employers are obliged to consider and respond to requests regarding part-time work. Such requests are not subject to certain conditions.⁵⁸⁵

There are no mechanisms to promote or ensure that workers and employers maintain contact during the period of leave and make arrangements for any appropriate reintegration measures.

9. Time off from work on grounds of force majeure (Clause 7)

According to the Health Care and Health Insurance Act (hereinafter the HCHIA)⁵⁸⁶ workers are entitled to time off from work on grounds of force majeure for urgent family reasons in case of sickness or accident. The duration is limited to seven working days for a child under seven, or to fifteen days for an older, mentally and physically handicapped child.⁵⁸⁷ The duration of time off from work for urgent family reasons may be exceptionally extended in special cases such as the sudden deterioration of the health of the child. The related salary compensation is equal to 80 % of the average salary during the preceding year and is paid by the Health Insurance Institute of Slovenia.

10. Final provisions (Clause 8)

In the view of the expert, all minimum requirements as specified in the Directive have been implemented. Nevertheless, more could be done in order to implement Paragraph 2 of Clause 6 which encourages employers and workers to facilitate the return to work following parental leave by maintaining contact during the period of leave and by making arrangements for any appropriate reintegration measures.

National legislation is more favourable since the length of the parental leave is longer than required by EU law and parents taking parental leave are entitled to parental benefits.

11. Sanctions (Article 2)

Remedies and sanctions in Slovenia are effective, proportionate and dissuasive. Sanctions depend on the reasons of bringing the lawsuit to court. A worker may request judicial protection before a labour court if he or she thinks that the employer has failed to fulfil his obligations arising from the employment relationship or that he has violated any of his/her rights arising from the employment relationship.⁵⁸⁸ The worker may therefore claim continuation of his/her employment including all rights deriving from the employment contract, reinstatement to a former position, payment of social security contributions and of salary with statutory interest, reimbursement of legal costs etc. In addition, a worker may claim damages for material loss and damages for immaterial loss arising from unlawful acts, actions or omissions pursuant to the general rules of civil law. Damages are not capped. In the determination of the compensation for non-pecuniary damage, it must be taken into account that the compensation is effective and proportional to the damage suffered by the worker and that it discourages the employer from repeating the violation.⁵⁸⁹

The competent labour and social court also decides disputes between the Ministry of Labour, Family, Social Affairs and Equal Opportunities and parents or other persons who claim to have the right to parental leave, parental benefits and other rights deriving from the PPFBA.

⁵⁸⁵ Articles 48, 48.a and 48.b of the PPFBA.

⁵⁸⁶ Health Care and Health Insurance Act, Official Gazette of the Republic of Slovenia, Nos 72/06, 91/07, 76/08, 87/11, 91/13.

⁵⁸⁷ Article 30 of the HCHIA.

⁵⁸⁸ Article 200 of the ERA.

⁵⁸⁹ Article 8 of the ERA.

As regards the burden of proof the ERA states that if a worker in a dispute alleges facts from which it may be presumed that there has been discrimination, it is up to the respondent to prove that there has been no breach of the principle of equal treatment.⁵⁹⁰

In cases of a violation of the prohibition of discrimination and unlawful dismissal during the period of pregnancy and during the period that parents are on parental leave an administrative fine⁵⁹¹ may be imposed on the employer and some criminal sanctions⁵⁹² may also be imposed due to the violation of the right to equality and the violation of fundamental rights of employees.

12. Case law

The expert is not aware of any case law or legal provisions relating to parental, adoption and/or time-off leave that is contrary to the relevant case law of the CJEU. In addition, there is no national case law relating to parental, adoption or time-off leave which provides more favourable rights than the provisions of the Directive, existing national provisions or case law of the CJEU.

13. Practice and other relevant issues

The types of leave described in Section 1 are actually used in practice. With the exception of paternity leave they are usually used by mothers. However, there are no statistical data available on this subject.

There are no positive action measures at the national level to promote a more balanced share of family responsibilities between both parents in relation to these leaves.

With the adoption of the new PPFBA-1 there are no longer any relevant gaps at the national level. The expert can only note the provisions in the PPFBA-1 according to which the father may transfer all 130 days of his parental leave to the mother, but mothers can only transfer 100 days to the father. This means that 30 days of the parental leave are provided on a non-transferable basis only to mothers, but not to fathers. However, the paternity leave of 30 days to which fathers are entitled is not transferable either.

SPAIN – *María Amparo Ballester Pastor*

1. Context

The main features of leaves aimed at facilitating the reconciliation of work, private and family life in Spain are the following:

1. Maternity leave lasts for sixteen continuous weeks (with two further weeks for each child, in the case of multiple births). The first six weeks after birth are compulsory for the mother. If both parents work, the mother may choose to cede part of the remaining leave period (ten weeks) to the other parent. If the mother dies, the father can have the full maternity leave (sixteen weeks) even if the mother was not working. Employees who make use of these leave periods for birth or adoption will be entitled to remuneration equivalent to 100 % of their monthly salary as a social security benefit, with no upper limit, whenever the legal requirements are met (basically, a minimum period of previous working time is required that varies depending on the age of the mother). Public service employees have the same rights.
2. Paternity leave, irrespectively of whether maternity leave is shared with the mother, lasts for thirteen continuous days, extended by two more days for each child, in cases of adoption or fostering, with the right to 100 % of the monthly salary, without upper limit.

⁵⁹⁰ Article 6 of the ERA.

⁵⁹¹ Article 217 of the ERA.

⁵⁹² Articles 131 and 196 of the Criminal Code, Official Gazette of the Republic of Slovenia, No. 50/2012.

- Even though this leave is intended for the father, the provision is drafted neutrally so as to be compatible with family structures where both parents are of the same sex. For public service employees, the paternity leave period is fifteen days.
3. There are four kinds of parental leave in Spanish legislation: the breastfeeding permission (*permiso de lactancia*), the unpaid leave (*excedencia*), the ordinary reduction of working time for family care reasons and the reduction of working time for the purpose of taking care of a seriously ill child.
 4. There are other leaves legally established to allow workers to take care of first and second degree relatives who are dependents and are not children (unremunerated reduction in working time and unpaid leave).

There is no specific adoption leave in Spain. Parents of adopted children and foster parents have the same paternity leave and parental leaves as biological parents. The sixteen weeks of maternity leave in cases of adoption or fostering are recognised when the child is younger than six although the same maternity leave will apply if the adopted or fostered child is older than six but she/he has special difficulties integrating socially. This legislation does not raise any issues in relation to compliance with the Parental Directive or Pregnancy Directive 92/85.⁵⁹³

The notion of parental leave in Spain includes time off and working time reductions. They can be taken by working parents when they are responsible for children younger than certain ages (described below). The situation in which the right to parental leave arises is different from the one that grants the right to maternity and paternity leave, since these two have to be applied for immediately after (or almost immediately after) the child's birth. Usually, the parents apply for the maternity or paternity leave first, since this guarantees the full previous salary. When this finishes, they can apply for the parental leave if they want to.

2. Implementation of Directive 2010/18

Directive 2010/18 has not been specifically implemented in Spain. Directive 96/34 was implemented by the Law to promote the reconciliation of family and work responsibilities.⁵⁹⁴ Spain has not published any tables to illustrate the correlation between the Directive and transposition measures.

3. Purpose and scope (Clause 1)

Spanish legislation is applicable, with some specific characteristics described below, to both the public and the private sector. The scope of Spanish legislation includes all kinds of contracts, including part-time contracts, fixed-term contracts and employment relationships with a temporary agency.

4. Parental leave (Clause 2)

The four types of parental leaves established in Spain have different features and durations. They have not been revised with the entry into force of Directive 2010/18 since this was not considered necessary. There are some differences between the parental leaves recognised to workers and civil servants (specified below). The four Spanish parental leaves are the following: First, workers with children younger than nine months, including adopting and

⁵⁹³ Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) OJ L 348 of 28 November 1992, pp. 1-8.

⁵⁹⁴ Law 39/1999, of 5 November 1999, available at: http://noticias.juridicas.com/base_datos/Laboral/139-1999.html, accessed 2 April 2014.

fostering parents,⁵⁹⁵ and civil servants with children younger than twelve months⁵⁹⁶ have the right to a paid leave of an hour a day. Even though this permission is called a ‘breastfeeding permission’ (*permiso de lactancia*) its objective is not only to breastfeed but, more generally, to take care of the child. Second, workers and civil servants have the right to an unpaid leave (*excedencia*) that can last until three years after the child’s birth or after the adoption and fostering resolution.⁵⁹⁷ Third, parents (both workers and civil servants, and including adopting and fostering parents) of children younger than twelve can ask for a reduction in working time, in which case their salary is reduced proportionally.⁵⁹⁸ Fourth, parents, including workers and civil servants, can ask for a reduction in working time for the purpose of taking care of a seriously ill child, in which case the social security system guarantees that the worker receives 100 % of his/her previous full-time salary.⁵⁹⁹

All of the Spanish parental leaves are recognised individually, for each of the parents. Recently, by Law 3/2012, of 6 July 2012, Article 37.4 of the Workers’ Statute was modified according to the *Roca Alvarez* case⁶⁰⁰ so working parents (fathers or mothers) have equal access to the so-called breastfeeding permission, given that this permission is in reality a parental leave. Even though civil servants’ breastfeeding permission is still recognised in Spanish Law preferentially to mothers in Article 30.1.f of Law 30/1984, of 2 August 1984, Spanish Courts have interpreted it according to the *Roca Alvarez* case, so the access to it is recognised to fathers on the same conditions as to mothers for civil servants as well.⁶⁰¹

The possibility for one parent to transfer part of the parental leave to the other parent does not exist in Spain. Only the breastfeeding permission has to be shared if both parents want to have access to it. The rest of the parental leaves can be taken fully by the mother and the father, even accumulatively. Any of the existing types of parental leave is allowed in case of surrogacy if the workers or civil servants have adopted or foster the child.

5. Modalities of application (Clause 3)

The breastfeeding permission can be used in two ways: first, the worker may be absent from work during each working day for an hour (or in two periods of half an hour each); second, the worker can get to work each day half an hour later or, alternatively, leave half an hour before. The unpaid leave has to be taken full time and the reduction of working time has to be taken daily. This can be determined by the worker, from a minimum of one eighth and a maximum of half of his/her working day. No minimum or maximum applies to civil servants.

⁵⁹⁵ The breastfeeding permission for workers is established in Article 37.5 of the Workers’ Statute (WS), available at: http://noticias.juridicas.com/base_datos/Laboral/rdleg1-1995.t1.html#a37, accessed 1 April 2014.

⁵⁹⁶ The breastfeeding permission for civil servants is established in Article 30.1.f of Law 30/1984 of 2 August 1984, available at: http://noticias.juridicas.com/base_datos/Admin/l30-1984.html#a30, accessed 1 April 2014.

⁵⁹⁷ The unpaid leave for workers is established in Article 46.3 of WS, available at: http://noticias.juridicas.com/base_datos/Laboral/rdleg1-1995.t1.html#a46. The unpaid leave for civil servants is established in Article 29.4 of Law 30/1984 of 2 August 1984, available at: http://noticias.juridicas.com/base_datos/Admin/l30-1984.html#a29, both accessed 1 April 2014.

⁵⁹⁸ The reduction of working time for workers is established in Article 37.5 WS, http://noticias.juridicas.com/base_datos/Laboral/rdleg1-1995.t1.html#a37, accessed 1 April 2014. The reduction of working time for civil servants is established in Article 30.1.g of Law 30/1984, of 2 August 1984, http://noticias.juridicas.com/base_datos/Admin/l30-1984.html#a30, accessed 1 April 2014.

⁵⁹⁹ The reduction of working time for the purpose of taking care of a seriously ill child for workers is established in Article 135 quarter of the General Law of Social Security, Legislative Royal Decree 1/1994, of 20 June 1994, http://noticias.juridicas.com/base_datos/Admin/rdleg1-1994.t2.html#c8, accessed 2 April 2014. The reduction of working time for the same purpose for civil servants is established in Article 49 of the Basic Statute of Civil Servants, Law 7/2007 of 12 April 2007, available at: http://noticias.juridicas.com/base_datos/Admin/l7-2007.t3.html#a49, accessed 2 April 2014.

⁶⁰⁰ Case C-104/09 *Roca Alvarez*, [2010] ECR I-08661. In this judgment the CJEU established that the so-called breastfeeding permission in Spain was contrary to the Recast Directive (2006/54/EC) because it was an ordinary parental leave. By establishing it as a preferential leave for mothers it had a discriminatory effect against women.

⁶⁰¹ Judgment no. 203/2012 of the Central Court (administrative section) of the National Court of 4 April 2013, available at: <http://www.legaltoday.com/informacion-juridica/jurisprudencia/contencioso-administrativo/sentencia-juzgado-central-de-lo-contencioso-administrativo-num-2032012-04-04-2013>, accessed 1 April 2014.

The reduction in working time for the purpose of taking care of a seriously ill child can be determined by the worker. In this case the reduction has to be at least half of the ordinary working day.

The unpaid leave can be freely taken when and in the period that the worker decides. Since the right exists until the child reaches the age of three, the worker can apply for it on several occasions, returning to work between them. However, if both parents are workers of the same company and wish to take it simultaneously the employer can establish limitations for organisational reasons. The concrete form of the breastfeeding permission or of the reduction of working time is also up to the worker, whose preferences take priority over the organisational needs of the employer. Only in extreme cases, of disproportionate harm to the company, could the employer alter this right.

There is no notice period established legally if the worker applies for unpaid leave, but it can be established by collective agreement. There is a notice period of fifteen days if the worker applies for breastfeeding permission, ordinary reduction in working time or reduction in working time for the purpose of taking care of a seriously ill child. The legal notice period seems reasonable but it would have been more adequate if it had included the possibility that the notice is not complied with in case of force majeure. There is also a problem in relation to the possibility that the collective agreement establishes a different notice period, since it could be shorter than what is legally stipulated and might not take into account the situation of force majeure.

No length of work and/or service is required in order to benefit from parental leave. The situations where the granting of parental leave may be postponed for justifiable organisational reasons have been described above. There are no special arrangements for small firms. The only exceptional condition for access to parental leave to accommodate the needs of parents of children with a disability or a long-term illness in Spanish legislation is the reduction in working time for the purpose of taking care of a seriously ill child.

6. Adoption (Clause 4)

There are no additional measures in Spanish legislation to address the specific needs of adoptive parents.

7. Employment rights and non-discrimination (Clause 5)

If a dismissal takes place during the period in which any of the parental leaves described above are being used, the dismissal will be considered null and void unless there is a justified reason for it (in the same terms as those governing pregnancy or maternity leave).⁶⁰² The period of nine months after a child's birth is also protected by the nullity of the dismissal. After nine months the special protection of the nullity of the dismissal does not apply, unless the worker could be included in any other protected situation. However, the worker will have the same protection from unfair dismissal than any other worker.

Beyond dismissal, there are no specific protections against less favourable treatment in Spanish legislation.

Workers benefitting from any parental leave in Spain have the right to return to the same job or, if this is not possible, to an equivalent or similar job consistent with their employment contract or relationship. The situation of workers returning from an unpaid leave is ambiguous in legislation: if a worker returns within one year of unpaid leave he or she has the right to return to the same job. If a worker returns after one year of unpaid leave he or she only has the right to 'similar' work. However, an employer has the right to move an employee to similar work, so long as the employee does not have to change residence, and could, for example, move an employee to similar work the day after he or she has returned from unpaid leave. In practice, there is no difference in returning within or after one year of unpaid work.

⁶⁰² Article 108 of the Act Regulating Social Jurisdiction, Law 36/2011 of 10 October 2011, available at: <http://www.boe.es/buscar/act.php?id=BOE-A-2011-15936&tn=2&p=20120714>, accessed 3 April 2014.

Also, the Supreme Court has expressly recognised that they have the right to the same or a similar job upon return as well.⁶⁰³

Rights acquired or in the process of being acquired by the worker on the date on which parental leave starts are maintained as they stand until the end of the parental leave. In particular, during the unpaid leave the worker will maintain and increase his/her seniority.⁶⁰⁴ In addition, Spanish legislation establishes the presumption that during unpaid leave there has been effective contribution to the social security system.⁶⁰⁵ As well, it is established that during the time reduction the contribution to the system will be considered as if the work had been done full time.⁶⁰⁶

The status of the employment contract during unpaid leave is similar to a contract suspension. The status of the employment contract during breastfeeding permission does not change. The status of the employment contract during the reduction of working time, including the one for the purpose of taking care of a seriously ill child, is similar to that of a part-time labour contract.

There is general continuity of the entitlements to social security cover during the period of unpaid leave. Workers in this situation have the right to apply for pensions if they fulfil the requirements. Workers have the right to healthcare as well. However, they cannot apply for maternity leave, paternity leave, unemployment or sickness leave. The beneficiaries of breastfeeding permission and reductions in working time are active workers, so they keep their social security rights. For example, if a child is born during parental leave, this leave does not automatically turn into maternity leave for the mother; she would have to return to work for at least one day and then take maternity leave.

The only parental leave remunerated by the employer (in the public as well as the private sector) is the breastfeeding permission.

The only parental leave that is covered by a social security allowance is the reduction in working time for the purpose of taking care of a seriously ill child (in the public and the private sector): social security guarantees that workers receive the same salary as what they received before the reduction in working time. This benefit lasts until the end of the illness or until the child turns eighteen.

8. Return to work (Clause 6)

Spanish legislation could be in violation of Clause 6 of Directive 2010/18/EC because nothing has been established in order to guarantee that employers shall consider and respond to requests of “changes” to parents’ working hours and/or patterns for a set period of time when they come back to work after a parental leave. The current Article 34.8 of the Workers’ Statute only recognises the worker’s right to working time adjustments for family care reasons if this is expressly established in a collective agreement or if it is accepted by the employer. Art. 37.6 WS does not solve the problem either because it does not allow the workers to ‘change’ their schedule but simply to choose when their daily working time reduction starts or finishes.⁶⁰⁷ The rules are the same for civil servants.

Workers and civil servants on unpaid leave will have the right to attend to any training session organised by the employer.⁶⁰⁸

⁶⁰³ Judgment of the Supreme Court of 21 February 2013, appeal no. 2484/2011.

⁶⁰⁴ Article 46.3 of the Workers’ Statute and Article 29.4 of Law 30/1984, of 2 August 1984

⁶⁰⁵ Article 180.1 General Law of Social Security (*Ley General de la Seguridad Social*), Royal legislative Decree 1/1994, of 20 June 1994, available at: http://noticias.juridicas.com/base_datos/Admin/rdleg1-1994.t2.html#a180, accessed 16 August 2014.

⁶⁰⁶ Article 180.3 General Law of Social Security (*Ley General de la seguridad Social*), Royal legislative Decree 1/1994, of 20 June 1994, available at: http://noticias.juridicas.com/base_datos/Admin/rdleg1-1994.t2.html#a180, accessed 16 August 2014.

⁶⁰⁷ In its judgment of 13 June 2008 the Supreme Court of Spain ruled that the right to working time reduction for parental reasons does not include the right to do any schedule rearrangement. Available at: <http://www.poderjudicial.es/search/doAction?action=contentpdf&database=TS&reference=20659&links=&optimize=20080925&publicinterface=true>, accessed 17 August 2014.

⁶⁰⁸ Article 46.3 of the Workers’ Statute and Article 29.4 of Law 30/1984, of 2 August 1984.

9. Time off from work on grounds of force majeure (Clause 7)

Article 37.3.b of the Workers' Statute establishes a two-day paid leave when a second-degree relative dies, has an accident, becomes seriously ill, needs to be hospitalised or undergoes a surgical intervention that does not require hospitalisation. Article 30.1.a. bis of Law 30/1984 establishes for civil servants three days paid leave when an immediate relative dies, has an accident, or becomes seriously ill. All of them are quite serious situations. This paid leave is four days if the worker needs to travel to another town (five in the case of civil servants). However, time off from work on the grounds of *force majeure* cannot be considered fully guaranteed, at least as required by Clause 7 of Directive 2010/18, because there is no general permission applicable in cases of sickness or accident 'that makes the immediate presence of the worker indispensable' if they are not as serious as Article 37.3.b. of the Workers' Statute and Art. 30.1.a bis of Law 30/1984 require.

10. Final provisions (Clause 8)

Spanish legislation does not comply with the minimum requirements of Directive 2010/18 in the following respects: a) Nothing has been established in order to guarantee that employers shall consider and respond to requests of changes to parents' working hours and/or patterns for a set period of time when they come back to work after a parental leave. This could be in violation of Clause 6 of Directive 2010/18; b) Time off from work on the grounds of *force majeure* cannot be considered as completely guaranteed by Spanish law, at least as required by Clause 7 of Directive 2010/18, because there is no general permission applicable in cases of sickness or accident 'that makes the immediate presence of the worker indispensable'; and c) Spanish legislation does not consider the interests of workers in specifying the length of notice periods for parental leaves as required by Clause 3.2 of Directive 2010/18, since nothing is established in this respect and collective agreements can freely establish them.

Spanish legislation exceeds the minimum requirements of Directive 2010/18 in the following respects:

a) The possibility for one parent to transfer part of the parental leave to the other parent does not exist in Spain. Only the breastfeeding permission has to be shared if both parents want to have access to it. The rest of the parental leaves can be taken fully by the mother and the father, even accumulatively; b) Spanish legislation establishes the presumption that during unpaid leave there is effective contribution to the social security system. It is also established that during the time reduction the contribution to the system is considered as if the work is done full time.

11. Sanctions (Article 2)

There are four possible sanctions against the employer that fails to respect employees' parental rights: First, if a dismissal takes place during any parental leave, under Article 108 of the Act Regulating Social Jurisdiction the dismissal will be considered null and void unless there is a justified cause. Second, under the same Act there is a shorter judicial procedure that aims to guarantee that any conflict between employee and employer about parental leave is solved as soon as possible, so the worker can have access to his/her right immediately (Article 139.1.b). Third, the worker can ask for a compensation of damages under the same Act (Article 139.1.a). Fourth, under Articles 7.5 and 40.1.b of the Law of Offences and Penalties in the Social Order, the employer could be considered guilty of a serious misconduct, in which case he/she could be ordered to pay an administrative sanction of EUR 626 to EUR 6 250.⁶⁰⁹ Civil servants (all, including the ones that had exercised parental rights) may only be separated from service (the equivalent to dismissal) by serious misconduct, which means that

⁶⁰⁹ Royal legislative Decree 5/2000, of 4 August 2000.

they would have the right to recover their work if serious misconduct had not existed.⁶¹⁰ They would have the right to ask for a compensation of damages under general legislation.

Theoretically, this frame of sanctions is adequate but, in some particular cases, effective reparation of damages could not be guaranteed. This was true for a case that gave rise to the judgment of the European Court of Human Rights in *Garcia Mateos v. Spain*, in which the Court established that Spain had to pay compensation of damages of EUR 16 000 to the worker that could not benefit from the parental leave that had been recognised by a Spanish Court.⁶¹¹

12. Case law

The Spanish Constitutional Court has reinforced workers' parental rights by linking them to the Spanish Constitution and by declaring that an effective balance between working and family life is an aim of constitutional importance that must be taken into account when interpreting and applying the law. In this way the Spanish Constitutional Court has established that the right to reconcile working and family life is a fundamental right.⁶¹²

13. Practice and other relevant issues

The four types of parental leave are used in practice by Spanish workers and civil servants. According to the Spanish Active Population Survey (*Encuesta de Población Activa*) in 2012, 95 % of workers and civil servants who applied for an unpaid leave (*excedencia*) were women.⁶¹³ This survey shows similar data in relation to the percentage of workers and civil servants applying for a reduction in working time in 2012 to take care of dependents: 90.24 % of them were women.⁶¹⁴ More recent official data are not available. Data shows that co-responsibility between men and women in Spain is far from being accomplished.

There are no relevant measures at a national level to promote a more balanced share of family responsibilities between both parents in relation to parental leaves. For example, even though the aim of Law 3/2007, of 22 March 2007, for the effective equality between women and men (which first introduced paternity leave in Spain) was to gradually extend the paternity leave to four weeks over a six-year period, this promised increase has been postponed year after year. In addition, none of the types of parental leave currently applicable in Spain contains any measures to promote its use by men.

Another relevant issue in relation to parental leaves has to do with the latest labour law reforms. The Spanish 2012 Labour law reform⁶¹⁵ has decreased the scope of employees' parental right since the unremunerated reduction of working time that can be asked for based on parental reasons must be applied on a daily basis, which means that it is no longer allowed to use this option for longer periods of time. In addition, the reform has introduced, for the first time, the possibility that collective agreements can establish criteria for the concrete determination of working time reduction. Before the 2012 reform there was a wide and almost absolute right for employees to establish their concrete time arrangements. The new

⁶¹⁰ Article 97 of Basic Statute of Public Employees (Estatuto Básico del Empleado Público), Law 7/2007, of 12 April 2007, available at: http://noticias.juridicas.com/base_datos/Admin/17-2007.t7.html#a93, accessed 17 August 2014

⁶¹¹ Application no. 38285/09 of 19 February 2013, available at: <http://hudoc.echr.coe.int/sites/fra/pages/search.aspx?i=001-116739>, accessed 3 April 2014.

⁶¹² Judgment no. 26/2011 of the Constitutional Court of 14 March 2014, available at: http://www.poderjudicial.es/cgpj/es/Temas/Igualdad_de_Genero/Legislacion_y_jurisprudencia/Jurisprudencia_espanola/Conciliacion_de_la_vida_laboral_y_familiar/STC_26_2011_14_03_2011, accessed 3 April 2014.

⁶¹³ <http://www.ine.es/jaxi/tabla.do?path=/t25/a072/a01/10/&file=c90006.px&type=pcaxis&L=0>, accessed 3 April 2014.

⁶¹⁴ http://www.ine.es/jaxi/tabla.do?type=pcaxis&path=/t00/mujeres_hombres/tablas_1/10/&file=em04001.px, accessed 3 April 2014.

⁶¹⁵ Law 3/2012 of 6 July 2012 on Urgent Measures for the Reform of the Labour Market, available at: <http://www.boe.es/boe/dias/2012/07/07/pdfs/BOE-A-2012-9110.pdf>, accessed 1 April 2014.

legislation means that the negotiators can decide when the reduction of working time has to take effect.

SWEDEN – Ann Numhauser-Henning

1. Context

In Sweden there is now a single non-discrimination Act – the Discrimination Act (DA)⁶¹⁶ – implementing all EU law in the field of non-discrimination regardless of protected group and area of activities. This Act does not explicitly refer to any type of leave whether related to pregnancy, maternity or other, but it does cover any situation which can be assessed as sex discrimination.

The Parental Leave Act (PLA)⁶¹⁷ regulates the different *rights to leave* in connection with small children (including a general prohibition on detrimental treatment while making use of these rights). There are currently six different forms of leave: maternity leave, full-time parental leave without parental benefits until the child is 18 months old (or 18 months after having received a child in adoption, until the child is 8 years old), or with parental benefits also thereafter, part-time (reduced hours) parental leave with parental benefits,⁶¹⁸ part-time (reduced hours, up to one quarter) parental leave without parental benefits until the child is 8 years old, occasional parental benefits when taking care of a sick child, and, finally, full-time or part-time (reduced hours) leave when receiving (municipal) care support. The right to full-time maternity leave is regulated in Section 4 of the PLA. As prescribed by Article 8 in Directive 92/85/EEC,⁶¹⁹ maternity leave amounts to fourteen weeks before or after giving birth, two weeks of which are compulsory. This right to leave is independent of but linked to a right to parental benefits (compare below).

Maternity benefits, paternity benefits and parental benefits (including occasional benefits for the care of a sick child) are regulated separately in the Social Security Code (SSC),⁶²⁰ its rules in Section B Chapters 11-13. Benefits are paid as parental benefits following the birth or adoption of a child (Chapters 11-12) and as occasional parental benefits when taking care of a sick child (Chapter 13). Occasional parental benefits are also paid as special paternity benefits (only to the father) for a maximum of ten days related to the birth or adoption of a child (and can therefore be taken during the mother's maternity leave). Parental benefits are paid for a maximum of 480 days for each child until the child is 12 years old. However, only 96 days of these 480 can be taken after the child has reached the age of four. 390 days are paid at income-replacement level and 90 days at minimum level (if there is no income to be replaced, parental benefits are paid for 480 days at minimum/basic level). Parental benefits are paid to the parent – whether the mother or the father – who actually stays home from work to take care of the child and are therefore, generally speaking, transferable between parents. 60 days at income-replacement level must be taken by both the mother and the father, and these days are non-transferable. Occasional parental benefits are therefore also paid to the parent – whether the mother or the father – actually caring for the sick child.

The right to maternity leave is regulated in the PLA, but the benefits paid are included in the single category of parental benefits. Nor is there any difference with regard to the right to benefits concerning adoption as compared to having a biological child: the law refers to

⁶¹⁶ (2008:567).

⁶¹⁷ (1995:584).

⁶¹⁸ You always have a right to leave until the child is 18 months old – whether you receive benefits or not. After that, the right to leave is related to the fact that you also receive benefits. When to receive benefits is your own choice as long as you do not exceed the limit of 480 days.

⁶¹⁹ Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding (tenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) OJ L 348 of 28 November 1992, pp. 1-8.

⁶²⁰ (2010:110).

parental benefits. (The date on which the parent receives the adoptive child in his/her care equals that of birth in any rule, except where the rule refers to a specific age of the child.)

Parental benefits therefore include maternity benefits as well as the two non-transferable 60-day periods of benefits, whereas there is a special type of benefits, called occasional benefits, that covers 10 days of paternity benefits as well as benefits for the care of sick children for both mothers and fathers.

In addition to parental benefits as described above, there are special rules on the leave to take care of sick relatives. There is a special Act: the Act on the right to leave for urgent family reasons.⁶²¹ There are no explicit time limits to this right but its nature – related to severe sickness or accidents making the employee's presence absolutely necessary – indicates that it is not for a long time. There is also a right to leave/reduced hours when caring for severely sick relatives according to the Act on leave for the care of relatives.⁶²² This right to leave is related to special care benefits regulated in Chapter 47 SSC. The right to leave is maximised to 100 benefit days – 240 days in the case of caring for a relative who has Aids caused within the healthcare system (for example, in a hospital).

Benefits are therefore mainly financed through social security. The costs for the statutory parental benefits scheme are paid by employers through general pay-roll taxation. Complementary collective bargaining provisions for parental – or even maternity – wages are important for quite extensive groups of workers/mothers, however, due to the income ceiling in the social security scheme, which has been set at 10 'basic amounts' or approximately EUR 49 000 (SEK 441 000).

With regard to parenthood, day-care facilities for children from the age of one until well beyond the initial school age are guaranteed, and provided at a subsidised maximum cost. There is a regulation on special state funding for municipalities, applying a maximum fee (*maxtaxa*) for public childcare facilities.⁶²³ The maximum fee to be applied according to this regulation is EUR 134 (SEK 1 260) per month for one child, an additional EUR 89 (SEK 840) for the second and EUR 45 (SEK 420) for the third child. Such facilities are also guaranteed within three months after the child reaches the age of one. Day-care facilities for children are therefore to a considerable extent subsidised by public means. These rights are provided at municipality level. Since 1 July 2008 the possibility has existed to receive a care support (*vårdnadsbidrag*) of approximately EUR 319 per month (SEK 3 000).⁶²⁴ The care support is a politically much-debated possibility for municipalities to locally decide to introduce special care support benefits for parents wanting to spend time with their small children (between the ages of 1 and 3). The maximum benefit is therefore set at EUR 319 (SEK 3 000) per month and can be combined with paid work but cannot be used by parents using a public day-care centre for their children.

2. Implementation of Directive 2010/18

The implementation of Directive 2010/18 was considered in the government report *Genomförandet av det nya föräldraledighetsdirektivet*.⁶²⁵ Swedish law was considered to fully comply with the new Directive and no further implementation measures were suggested. To the expert's knowledge, no tables have been published that illustrate the correlation between the Directive and transposition measures.

⁶²¹ (1998:209).

⁶²² (1988:1465).

⁶²³ The (2001:160) Ordinance on state financing for municipalities applying a maximum fee for childcare facilities.

⁶²⁴ Prop. 2007/08:91 on care support.

⁶²⁵ Ds 2010:44.

3. Purpose and scope (Clause 1)

National legislation (see Section 1) is generally applicable and does not distinguish between the public and the private sector. Nor does it differentiate between different forms of employment, such as part-time, fixed-term or temporary-agency employment.

4. Parental leave (Clause 2)

As described above (Section 1) the regulation of the right to leave and the right to parental benefits is quite complex – the right to *leave* is regulated in the 1995 PLA whereas the right to *benefits* is regulated in the SSC. Where legislation is concerned there are no differences between the public and the private sector, but additional benefits may be regulated in collective agreements.

As described above the total amount of parental leave benefit days is 480 days for each child until the child is 12 years old. However, only 96 days of these 480 can be taken after the child has reached the age of four. 390 days are paid at income-replacement level and 90 days at minimum level (if there is no income to be replaced parental benefits are paid for 480 days at minimum/basic level). Parental benefits are paid to the parent – whether the mother or the father – who actually stays home from work to take care of the child and are therefore, generally speaking, transferable between parents. 60 days at income-replacement level are, however, non-transferable. Occasional parental benefits are there also paid to the parent – whether the mother or the father – actually caring for the sick child.

The age limit was recently increased from eight to twelve, but only a limited number of days – 96 – may be taken after the child has reached the age of four. The same rule applies to adoptive children, irrespective of the age at which the child is adopted. There are no rights regarding surrogacy in Sweden – in principle an adoption is required and then the rules on adoption apply (i.e. the same rules as regarding biological children).

5. Modalities of application (Clause 3)

There is an absolute right to leave until a child is 18 months old and to reduced hours up to one quarter (2 hours a day) until the child is 8 years old. Additionally, there is always a right to leave when you are entitled to parental benefits according to the Social Security Code. Such benefits can be taken in very flexible ways: full-time, three quarters, one half, one quarter or one eighth. The rules on the distribution of such leave are found in the PLA. As a general rule, leave may (only) be divided into a maximum of three periods for each calendar year (this rule does not include occasional parental benefits – then there is no maximum). When possible, the employee is required to give notice no later than two months prior to the commencement of the leave and otherwise ‘as quickly as practicable’ – which appears to be a reasonable balance of interests. The distribution of the leave and any other issues concerning the leave shall be discussed with the employer and ‘where it is not inconvenient for the employee, full-time leave shall be taken out in such a manner that the employer’s activity may continue without substantial disturbance’ (PLA Section 14 1 phar.). In cases of reduced working hours, if an agreement cannot be reached regarding how the leave shall be taken, the employer shall distribute the leave according to the wishes of the employee, if such distribution does not cause substantial disturbance to the employer’s activity. It may not be distributed in any manner other than spreading it over all days of the working week, dividing the leave over the working day or distributing it to any other time than the beginning or the end of the working day. If a decision is made other than according to the wishes of the employee the employer shall inform not only the employee but also his/her union (PLA Section 14 Paragraphs 2 and 3).

There are no requirements whatsoever regarding qualifying periods of employment in the Swedish leave legislation.

The rules on the distribution of leave in PLA Section 14 have been assessed by the legislator as meeting the necessities of small firms and therefore apply to all employers regardless of size.

Concerning disabled children, there are special parental benefits provided for disabled/long-term sick children and there is always a right to leave according to the PLA when on benefits.

6. Adoption (Clause 4)

As was already indicated above, the general rules on maternity/paternity and parental benefits apply. There is also a right to a special adoption support of approximately EUR 4 400 (SEK 40 000) when adopting a child from abroad.⁶²⁶

7. Employment rights and non-discrimination (Clause 5)

In Section 16 of the PLA, introduced prior to the Directive, there is a ban on unfavourable treatment (*missgynnande*) on the grounds of taking parental leave – in terms of promotion, vocational training, pay or other terms of employment as well as the management and distribution of work. This ban implies a right to return to the same job or, if this is not possible, to an equivalent or similar job consistent with the employee's employment contract. It also implies that acquired rights stand during the parental leave and the employee's rights, for instance to a raise in wages, must also be taken into account during leave. During leave the employment relationship continues and there are no changes in social security coverage.

Parental benefits have been described above: there is a social security scheme of general coverage in place regarding parental benefits (including maternity and paternity benefits). The costs of this statutory parental benefits scheme are paid by employers through a general payroll tax. Additional parental pay may be – and usually is to a smaller or larger extent – paid according to collective agreement. The contents of such agreements vary between the different sectors of the labour market. They usually imply a 'top-up parental wage', compensating for the ceiling in the statutory benefit scheme – incomes above 7.5 'basic amounts' or approximately EUR 37 000 (SEK 330 000 SEK) per annum are not replaced in the social security system. Basically the extra protection is known to be better in sectors of the labour market dominated by women (such as the municipality sector) since trade unions tend to try to meet the special needs of their members. However, this way the social partners through their collective agreements can be said to further a tradition where mainly women take parental leave (and are attracted to jobs in sectors already dominated by women) – this is what is most convenient for the family as a whole since working conditions related to parenting therefore tend to be better in sectors/branches dominated by women.⁶²⁷

8. Return to work (Clause 6)

According to Section 15 of the PLA, an employee may discontinue her or his leave to resume her or his work to the same extent as before the leave. As was already described above, the PLA contains the right to leave in the form of reduced hours – with or without receiving statutory parental benefits. There is therefore always a right to reduction by a quarter of the working time until the child is 8 years old as well as whenever receiving parental benefits.

There are no explicit rules on employers and workers maintaining contact during parental leave. In the government report (Ds 2010:44) assessing the implementation of the Directive this obligation was regarded as covered by the rule on active measures in Chapter 3 Section 5 of the DA regarding the employer's duty to facilitate working life and family life reconciliation.

⁶²⁶ Chapter 22 SSC.

⁶²⁷ See further: L. Carlson *Searching for Equality, Sex Discrimination, Parental Leave and the Swedish Model with Comparisons to EU, UK and US Law* Uppsala, Iustus Förlag 2007.

9. Time off from work on grounds of force majeure (Clause 7)

As indicated above (Section 1) there is, on the one hand, a right to occasional parental benefits to care for a sick child (60 days a year until the child is 12 years old), and, on the other hand, the rights according to the Act on the right to leave for urgent family reasons. There is also a right to leave/reduced hours when caring for seriously sick relatives according to the Act on leave for the care of relatives. This right to leave is related to special care benefits regulated in Chapter 47 SSC and is maximised to 100 benefit days (240 days in the case of caring for a relative who has Aids caused within the healthcare system).

10. Final provisions (Clause 8)

In the opinion of the expert, Swedish legislation on these issues complies with Directive 2010/18.

11. Sanctions (Article 2)

Whenever the rules of the PLA are not met there is the possibility to take the employer to court in accordance with the general system of sanctions within Swedish labour law – i.e. asking for economic as well as punitive damages.⁶²⁸ A dismissal can be declared null and void – both applying the PLA and the Employment Protection Act.⁶²⁹ Should there be discrimination the DA will apply. In this case, damages are called ‘discrimination compensation’, which are generally more generous as they compensate discrimination.

12. Case law

In the opinion of the expert, Swedish case law is in line with that of the CJEU.

13. Practice and other relevant issues

Parental leave and parental benefits are generally well known and used in the Swedish system. The parental benefits scheme is administered by the National Social Security Board (*Försäkringskassan*), which every now and then reports on its use. According to a 2013 report, men’s share of parental benefit days still (2012) only amounts to 24.4 % whereas women use 75.5 %.⁶³⁰ Nevertheless, men’s share has been steadily increasing since the scheme’s introduction back in 1974. What is slightly more positive is that the share of ‘equal parenting’ has tripled and now amounts to 12.7 % in 2012 as compared to 4 % in 2000. The report stresses young age, higher education and higher earnings – especially for mothers – as important for ‘equal parenting’. Public-sector parents are more equal than those in the private sector as are those living in a metropolitan area. The report emphasises the importance of enhancing the position of the mother.⁶³¹ Until now, figures have normally been attributed to persistent pay discrimination and labour-market segregation between the sexes.

⁶²⁸ These damages correspond to damages paid in other labour-law disputes, although the level of damages in Swedish law is generally regarded as rather low.

⁶²⁹ (1982:80).

⁶³⁰ *De jämställda föräldrarna* (2013:8).

⁶³¹ See also Report 2012:9, Parental Benefits 1974-2011.

TURKEY – Nurhan Süral

1. Context

The rules on pregnancy and childbirth are found in the Labour Law,⁶³² Civil Servants Law,⁶³³ Social Insurances and General Health Insurance Law,⁶³⁴ the By-Law (implementing the legal instrument) on the Working Conditions for Pregnant or Nursing Workers, and Nursing Rooms and Day Nurseries⁶³⁵ and the State Personnel Department Public Personnel Circular, Serial no. 2.⁶³⁶ Family-related leaves are, in general, different for workers and civil servants. Generally speaking, leaves for civil servants are more generous than those for workers. The reason is not to deter private sector employers from employing female workers.

Maternity leave: In Turkey, there is a compulsory maternity leave of sixteen weeks (Labour Law, Article 74). The eight-week antenatal resting period may be reduced to three weeks at the request of the worker and after approval of a doctor, and the unused period is added to the eight-week postnatal resting period. For a multiple pregnancy, two more weeks are to be added to the antenatal leave. These antenatal and postnatal resting periods may be extended with a medical report on the basis of the worker's health and the nature of the work to be performed. The total period of maternity leave in Turkey is compulsory. An employer who requires a woman to work during this period is punishable by a fine of approximately EUR 470 (TL 1 343) in 2014.⁶³⁷

If childbirth occurs before the due date (early delivery), the unused antenatal portion of the leave is added to the postnatal portion of the leave (Labour Law, Article 74). The rules on duration of maternity leave and early delivery are the same for civil servant women (Civil Servants Law, Article 104A). The Civil Servants Law also covers the death of the civil servant mother during maternity leave. Where this occurs, the civil servant father may use the leave granted to the mother (Article 104A). Male workers do not have such right unless so provided in the collective labour agreement.

Additional maternity leave: There is an additional maternity leave to be granted upon request: the worker, if she so requests, has to be granted unpaid leave of up to six months following the postnatal period. The two periods, compulsory leave and additional leave, must be consecutive, producing an entitlement to sixteen weeks (eighteen for a multiple pregnancy) plus six months of leave. There can be no gap between the two periods.⁶³⁸ Additional unpaid maternity leave upon request is two years for female civil servants.⁶³⁹ Additional maternity leave is granted to working mothers (civil servants and workers) but there is a corresponding right for civil servant fathers named 'paternity leave'.

All rights linked to the employment contract continue to apply during the maternity leave. Following the maternity and/or additional maternity leave, the worker shall return to her previous job or a similar job without any reduction in payment. These rights are also reserved for female civil servants.

Breastfeeding: Breastfeeding leave is granted only to female civil servants and female workers. For female civil servants time allowed for breastfeeding is three hours a day for a period of six months following the termination of maternity leave and 1½ hours a day for the second six-month period (Civil Servants Law, Article 104D). In practice, nursing civil servants preferred adding up these hours and taking one full day off per week. An amendment was adopted to prohibit the compilation of nursing periods, as this is against the rationality of

⁶³² *İş Kanunu*, Law no. 4857, Official Gazette 10 June 2003, no. 25134.

⁶³³ *Devlet Memurları Kanunu*, Law no. 657, Official Gazette 23 July 1965, no. 12056.

⁶³⁴ *Sosyal Sigortalar ve Genel Sağlık Sigortası Kanunu*, Law no. 5510, Official Gazette 10 June 2006, no. 26200.

⁶³⁵ *Gebe veya Emziren Kadınların Çalıştırılma Şartlarıyla Emzirme Odaları ve Çocuk Bakım Yurtlarına Dair Yönetmelik*, Official Gazette 16 August 2013, no. 28737.

⁶³⁶ *Devlet Personel Başkanlığı Kamu Personeli Genel Tebliği (Seri no. 2)*, Official Gazette 15 April 2011, no. 27906.

⁶³⁷ Article 104 Labour Law.

⁶³⁸ Article 74 Labour Law.

⁶³⁹ Article 108B Civil Servants Law.

having daily nursing periods.⁶⁴⁰ The daily nursing period is 1½ hours during weekdays for female workers until the child is one year old (Labour Law, Article 74).

Adoption leave: Adoption leave was first introduced in February 2011 (only) for civil servants under Article 108C of the Civil Servants Law. If a child under three is adopted, there will be, upon request, an unpaid adoption leave of up to 24 months. If both spouses are civil servants, then these periods can be taken at the same time or consecutively. In such a case the total period cannot exceed 24 months. For workers, this issue is left to individual/collective labour agreements.

Paternity leave: There is additional maternity leave for female workers and civil servants. Paternity leave corresponding to additional maternity leave is granted to civil servant fathers. Paid or unpaid paternity leave for male workers is left to individual/collective labour agreements. A male civil servant is granted a paid paternity leave of ten days upon the birth of his child under Article 104B of the Civil Servants Law. Moreover, there is a two-year paternity leave for the (civil servant) father, upon request. However, whereas the additional unpaid maternity leave of two years starts after the female civil servant's maternity leave, paternity leave will start immediately after the child's birth for the (civil servant) father.⁶⁴¹ Where both additional maternity leave and paternity leave are to be taken, these leaves may be used at the same time or consecutively. In such a case the total cannot exceed 24 months per child.⁶⁴²

Excuse leave: The so-called 'excuse leave' (leave for a valid reason) (*mazeret izni*) is a ten-day paid leave to which a second ten-day paid leave may be added in a period of one year. The second ten-day period will be considered as part of the annual leave (Civil Servants Law, Article 104C). Workers may have excuse leaves in accordance with their individual/collective agreements.

Sickness and patient-companionship leave: A 'sickness and patient-companionship leave' (*hastalık ve refakat izni*) is a three-month paid care leave to be granted upon a medical report to the civil servant parent in the event of a serious accident or sickness requiring long treatment necessitating companionship of a child, parent, spouse or sibling. The leave may be extended for the same duration (Article 105/7 Civil Servants Law). If the situation continues, upon submission of a medical report so specifying, the civil servant parent will be granted an unpaid leave of up to eighteen months.⁶⁴³

A newly introduced leave is for the civil servant parent of a disabled child or a child with a permanent sickness. Article 7 of Law no. 6525⁶⁴⁴ amending Article 104E of the Civil Servants Law envisages a paid leave of up to ten days for the civil servant mother or father in case of sickness of a child with at least 70 % disability (if the child is married then if the child's spouse is also at least 70 % disabled) or a child with a permanent illness. This leave can be used wholly or partially in a period of one year.

Facilitating entitlement to retirement for parental reasons: A female worker with a disabled child in need of constant care will be entitled to early retirement: 90 extra pensionable days will be added to each year of service under Article 28 of the Social Insurances and General Health Insurance Law. It is the Social Security Organisation Health Board (*Sosyal Güvenlik Kurumu Sağlık Kurulu*) that determines the child's condition on the basis of the relevant by-law.⁶⁴⁵

Also, where a worker resigns due to pregnancy or having given birth, she may, if she chooses, pay contributions for a maximum period of two years during which she remains unemployed. This period starts at the birth and the worker may benefit from this provision for two separate births.⁶⁴⁶

⁶⁴⁰ Article A/II/e State Personnel Department Public Personnel Circular, Serial no. 2.

⁶⁴¹ Article 108B Civil Servants Law.

⁶⁴² Article A/III/d State Personnel Department Public Personnel Circular, Serial no. 2.

⁶⁴³ Article 108A Civil Servants Law.

⁶⁴⁴ Official Gazette 27 February 2014, no. 28926.

⁶⁴⁵ Article 15, By-Law on Incapacity for Work and Schemes for Invalidity (*Çalışma Gücü ve Meslekte Kazanma Gücü Kaybı Oranı Tespit İşlemleri Yönetmeliği*), Official Gazette 11 October 2008, no. 27021.

⁶⁴⁶ Article 41 Social Insurances and General Health Insurance Law.

Leave upon marriage or death of the child: Under Article 104B of the Civil Servants Law a civil servant parent will be entitled to seven days' paid leave upon marriage or death of a child.

Sabbatical leave: An unpaid 'sabbatical leave' of one year to be used altogether or in at most two parts is granted to civil servants who have completed five (previously ten) years of service. The sabbatical leave can only be taken once throughout the entire period of service. It cannot be used when the civil servant serves in a region which is subject to martial law, during a state of emergency or in the event of a disaster (Article 108E Civil Servants Law).

Additional Article 1 added to Law no. 5620⁶⁴⁷ in February 2011 covers leaves for permanent workers employed in the public sector. Permanent workers employed in the public sector are entitled to an unpaid 'sickness and patient companionship leave' of six months plus six months. Workers permanently employed in the public sector are also entitled to an unpaid 'sabbatical leave' of six months upon the completion of ten years of employment. This sabbatical leave can only be taken once throughout the entire period of employment. These leaves may be taken for family-related reasons. No specific reason needs to be given to use this leave. For example, if the child suffers from a serious illness, this sabbatical leave may be taken by the parent and used as 'care leave'. In addition to these specifically designed leaves, permanent workers employed in the public sector fall within the scope of the Labour Law and therefore enjoy leaves as prescribed in the law, and in individual/collective labour agreements.

Care and childcare: The By-Law on the Working Conditions for Pregnant or Nursing Workers and Nursing Rooms and Day Nurseries became effective on 16 August 2013. According to Article 5/2-3, this by-law is to be applied to all working women unless there is a provision to the contrary in their own special regulations.

According to the By-Law on the Working Conditions for Pregnant or Nursing Workers and Nursing Rooms and Day Nurseries, employers employing 100-150 female workers have to establish a nursing room located at most 250 metres away from the workplace, for female workers to nurse their children below the age of one. Employers employing more than 150 female workers have to establish a nursing room and a day nursery (crèche) for children between 0-60 months old. Children of 60-66 months old may also be cared for in these facilities if their parents consider it too early to enrol them for primary education.⁶⁴⁸ The number of male workers with custody over children as a result of their wife's death or a divorce has to be added to the figures necessitating the establishment of nursing rooms and day nurseries. Employers may cooperate to establish a common nursing room and/or day nurseries. Outsourcing (agreements with nurseries authorised by public authorities) is also possible for the provision of such services. There is a separate by-law for nursing rooms and day nurseries to be established by public bodies.⁶⁴⁹

Where the term 'civil servants' or 'workers' is used it denotes all, be it typical or atypical employment.

2. Implementation of Directive 2010/18

There is no legislation and/or national collective agreement implementing Directive 2010/18. There are the aforementioned family-related leaves or leaves that may be used for family/parental issues and they are quite generous in comparison with the EU-stipulated parental leave, which is a four-month leave to take care of a biological or adopted child, to be used until the child's age of eight.

⁶⁴⁷ *Kamuda Geçici İş Pozisyonlarında Çalışanların Sürekli İşçi Kadrolarına veya Sözleşmeli Personel Statüsüne Geçirilmeleri, Geçici İşçi Çalıştırılması ile Bazı Kanunlarda Değişiklik Yapılması Hakkında Kanun*, Official Gazette 21 April 2007, no. 26500.

⁶⁴⁸ Enrolment of 66-month-olds for primary education is obligatory, but enrolment of 60 to 66-month-olds is optional.

⁶⁴⁹ *Kamu Kurum ve Kuruluşlarının Açılacak Çocuk Bakım Evleri Hakkında Yönetmelik*, Official Gazette 8 December 1987, no. 19658.

There is no legislation and/or national collective agreement and nor is there any case law specifically related to parental leave within the understanding of Directive 2010/18. Information on existing types of family-related leaves or leaves that may be used as parental leave is provided under the first title, 'Context'. None of these leaves are called 'parental leave' but they are generous leaves that may be used for parental reasons. There is no legal impediment to introducing enhanced leaves through collective agreements, but these agreements usually focus on monetary issues, i.e. wages, wage supplements, etc., and indicate which laws are to be applied to other issues.

UNITED KINGDOM – *Aileen McColgan*

1. Context

In the UK there is maternity leave (both 'ordinary' and 'additional'), paternity leave (both 'ordinary' and 'additional'), adoptive leave, parental leave, emergency time off for dependents and a right for parents to request flexible working hours. The major features of these leaves are outlined below.

Maternity leave consists of 26 weeks' 'ordinary' and 26 weeks' 'additional' maternity leave of which the only compulsory period is two weeks immediately after the birth. The only significant difference between ordinary and additional maternity leave is that women are entitled to return to their original job on the same or no less favourable conditions after OML whereas after any period of AML women are entitled to return to the same job or, if this is not reasonably practicable for the employer, to another job which is suitable and appropriate in the circumstances. Women are entitled to 39 weeks' maternity pay of which the first six is generally at 90 % of salary and the remainder at a fixed rate currently EUR 166.93 (GBP 138.18 per week). Virtually all women employees are entitled to ordinary and additional maternity leave without any qualifying period of employment.

Paternity leave consists of 2 weeks' 'ordinary' and 26 weeks' 'additional' paternity leave, of which the only compulsory period is two weeks immediately after the birth. Ordinary paternity leave is available to all prospective fathers (and to men whose wives or partners are expecting a child) who have been continuously employed for at least 26 weeks at the fifteenth week before the child is expected to be born and that have, or expect to have, responsibility for the upbringing of the child. Ordinary paternity leave can only be taken from the date on which the child is born until 56 days after that date (or if a child is born earlier than the expected week, 56 days after the date of the first day of the expected week of its birth).

Fathers may also take up to 26 weeks' additional paternity leave if the mother of the child in respect of whose birth leave is sought returns to work and transfers a maximum of 26 weeks of her remaining ordinary and/or additional maternity leave to the father. The right to additional paternity leave is not, accordingly, a personal right of the father. Both ordinary and additional paternity leave are remunerated at EUR 166.93 (GBP 138.18) per week. The right to return from additional paternity leave is the same as that applicable after additional maternity leave.

Adoptive leave consists of 26 weeks' 'ordinary' and 26 weeks' 'additional' adoptive leave to be taken by one parent, with 2 weeks' ordinary paternity leave available to the other. Only those employees who have 26 weeks' continuous service are eligible. Ordinary and additional adoptive leave are paid at EUR 166.93 (GBP 138.18) per week. The right to return from ordinary and additional adoptive leave are the same as those applicable after ordinary and additional maternity leave respectively.

Parental leave (PL) consists of a total of 18 weeks' unpaid leave which each parent is entitled to take in respect of each child aged up to 5 (18 in the case of a disabled child, up to the fifth anniversary of the adoption of an adopted child, and in November 2012 the UK Government announced that the maximum age for all children will be to 18 from 6 April 2015). Parents must have been employed for a year before being entitled to leave. The leave is unpaid. It must be taken in whole weeks rather than more flexibly and only up to 4 weeks

may be taken in any one year unless the employer agrees to a longer period. The right to return from parental leave of less than 4 weeks is the same as that applicable after ordinary maternity leave, the right to return after a period of more than 4 weeks (in the event that this is allowed by the employer) is the same as that which applies after additional maternity leave.

Employees are also entitled to unpaid emergency leave for dependents if a dependent (including a child) falls ill or their care arrangements unexpectedly fail. The period of leave entitlement is such as is necessary for the employee to make alternative arrangements for the dependent's care.

The right to request flexible working hours is not strictly speaking a right to leave but can allow parents to combine work and family life more satisfactorily by encouraging employers to consider more flexible forms of working as regards time and/or place of work, for example. Until June 2014 the right applies to parents of children aged 16 or under, or disabled children under the age of 18. As from June 2014 all employees will have a right to request flexible working regardless of parental status. Employees must have 26 weeks' continuous employment at the date the application is made. Only one application can be made in a 12-month period. Employers must consider applications for flexible working hours although there is no requirement to grant them. Once such an application is agreed it becomes a permanent change to the contract of employment.

2. Implementation of Directive 2010/18

The Parental Leave (EU Directive) Regulations 2013, which came into force on 8 March 2013, increased the period of parental leave available in Great Britain in respect of each child from 13 to 18 weeks and imposed on the Secretary of State a duty to carry out periodic reviews of the operation of parental leave, such periods not to exceed 5 years and the first such review to be completed by 8 March 2018.⁶⁵⁰

The 2013 Regulations also extended the right to request flexible working hours to agency workers returning from parental leave (amending Section 80F of the Employment Rights Act 1996 ('ERA')). Similar provisions were made in Northern Ireland by Statutory Rules Nos 26 and 29 of 2013, the Parental Leave (EU Directive) (Maternity and Parental Leave) Regulations (Northern Ireland) 2013 and the Parental Leave (EU Directive) (Flexible Working) Regulations (Northern Ireland) 2013.⁶⁵¹

There are no relevant national collective agreements in the UK. The expert has not found any tables to illustrate the correlation between the Directive and transposition measures.

3. Purpose and scope (Clause 1)

The national legislation (the Maternity and Parental Leave etc. Regulations 1999; MPL Regs) is applicable to both the public and the private sector and applies to part-time workers and fixed-term contract workers, but generally only workers qualify as 'employees' under domestic law. This is a complex legal question which turns on the existence of a contract of employment and which generates many uncertainties in the case of the most disadvantaged workers. In short, unless a worker is employed under a contract which requires the worker to provide personal services and the employer to provide work, the worker will not be recognised as an employee and will not therefore be protected by parental leave and similar rights. Temporary agency workers may or may not qualify as employees of their agency (or, more unusually, they may not qualify as employees of the end employer, in cases in which the period of placement has been lengthy);

⁶⁵⁰ Amending Regulation 14 MPL Regs.

⁶⁵¹ These amend, in Northern Ireland, the MPL Regs and the ERA, both of which apply throughout the UK.

4. Parental leave (Clause 2)

As above, the total duration of (unpaid) parental leave is 18 weeks, increased from 13 weeks with the transposition of Directive 2010/18 by the Parental Leave (EU Directive) Regulations 2013 which amended Regulation 14 of the MPL Regs.

Entitlement to parental leave is in addition to any period of ordinary or additional maternity, paternity or adoptive leave. There is no difference in the duration of parental leave in the public sector and the private sector. Parental leave may be taken until the child is aged up to 5 (18 in the case of a disabled child and up to the fifth anniversary of the adoption of an adopted child and note the changes mentioned in paragraph 1 above). The right to parental leave is individual to each parent and cannot be transferred between them.

Parental leave is available to otherwise qualifying employees who have or expect to have ‘parental responsibility’ for the relevant child (Regulation 13): this will apply to surrogate parents who have undertaken legal responsibility for their child(ren).⁶⁵²

5. Modalities of application (Clause 3)

Parental Leave is very inflexible and except in cases of employer agreement to the contrary, can only be taken in blocks of at least a week at a time, no more than four weeks falling within any individual year (Schedule 2 of the MPL Regs). The options do not take into account the needs of workers, as distinct from those of employers, particularly given the unpaid nature of the leave.

The MPL Regs operate, in relation to parental leave, by providing for issues such as the notice period to be determined by workforce agreement or, in the absence of such agreement, by the default provisions in Schedule 2 to the Regs. That Schedule provides (Paragraphs 3-4) that an employee must give an employer at least 21 days’ notice of the intended leave, or when a father intends to take parental leave on the birth of a child; at least 21 days prior to the expected week of childbirth. Similar provision is made in respect of adopted children (Paragraph 5). Paragraph 6 then provides that employers may postpone a period of PL, except in cases where it is timed to coincide with birth or adoption,⁶⁵³ if ‘the employer considers that the operation of his business would be unduly disrupted if the employee took leave during the period identified in his notice’ and the employer agrees to grant the employee a period of leave of the same length ‘beginning on a date determined by the employer after consulting the employee, which is no later than six months after the commencement of that period’. Such notice of postponement should be given within 7 days of the employee’s notification of intended parental leave.

The right of employers to postpone PL, coupled with the unpaid nature of such leave and, in particular, the inflexibility of such leave in the expert’s view means that national legislation fails to take sufficient account of the interests of workers in this context.

As above, employees must have been employed by the same employer for at least a year before qualifying for entitlement to PL. Successive fixed-term contracts will allow an employee to accrue the necessary period, in some cases even if there have been breaks in between the contracts. There are no special rules in relation to small firms. As indicated above, parents with disabled children can take their 18 weeks’ parental leave over a longer period than other parents, until the child is 18 rather than 5. Such parents do not however qualify for any additional period of parental leave over and above the normal 18 weeks.

⁶⁵² The law relating to surrogacy is complex but such parents must generally apply for parental orders (if one is related to the child) or adoption orders (if not).

⁶⁵³ I.e. if the father or the adoptive parent with secondary care wishes to add a period of parental leave to the period of paternity leave.

6. Adoption (Clause 4)

Adoptive parents are entitled to parental leave as are other parents, such leave to be taken within five years of the placement of the child.

Adoptive parents are, in addition, entitled to adoption leave which functions like ordinary and additional maternity leave except that the 39-week paid period is paid only at the flat rate. Employers are free to provide more generous terms and many public sector employers treat adoptive leave the same as maternity leave with full pay for up to six months. Only those adoptive parents whose children are placed by an agency (as distinct from privately adopted) are eligible for adoption leave. Notice of the intention to take adoption leave must be given to the employer within 7 days of the employee being matched with the child, and must include the starting date of the leave and the date of placement of the child. 28 days' notice is required to claim statutory adoption pay. Adoption leave may be taken from 14 days prior to the expected placement date. There are slightly different arrangements in the case of adoption from overseas but the same general principles apply.

7. Employment rights and non-discrimination (Clause 5)

Less favourable treatment on the grounds of an application for, or the taking of, all forms of leave here discussed is unlawful, and dismissal connected with any of these forms of leave is automatically unfair.

As above, the position as regards return from parental leave depends on whether the employee has taken more than or less than four weeks' leave. In the case of shorter periods of parental leave the right is to return to the same job on no less favourable terms and conditions. In the case of longer periods of parental leave the right is to return to the same job or, if this is not reasonably practicable for the employer, to another job which is suitable and appropriate in the circumstances.

The contract of employment subsists during parental leave so employees continue to enjoy such rights as they have acquired prior to leave and continue to acquire any others that are dependent on accumulated service. They do not, however, enjoy the right to be paid their ordinary pay while on leave (unless there is a contractual agreement to that effect with their employers). There is no statutory entitlement to be paid during parental leave and no evidence that many employers provide paid PL. The social security system does not provide any allowance during parental leave

8. Return to work (Clause 6)

Workers returning from PL, like other workers, may request changes to their working hours and/or patterns. As above, changes which are made by reason of a statutory request for flexible working hours are of a permanent rather than a temporary nature, while an employee who varied his or her hours to accommodate family related responsibilities can apply for another variation after a period of a year (for example to increase his or her hours of work) there is no guarantee that such an application will succeed. Prior to June 2014 the purpose of an application for flexible working had to be to enable the employee to care for the relevant child(ren) (s80F Employment Rights Act 1996), so it was not at all clear that an application could be made because the employee's childcare needs had *reduced*, rather than *increased*. This problem has disappeared with the extension of the right to request flexible working but, as above, it is a right to *request* rather than a right to be *granted* flexible working so there is no guarantee that the employee can return to his or her previous arrangements as appears to be required by Clause 6(1).

Employers are required to follow a set procedure in relation to requests for flexible working but the decision to refuse leave cannot be challenged except where the request has not been dealt with in a reasonable manner, or according to the required procedure, or it has been refused other than on permitted grounds (cost, detrimental effect on ability to meet customer demand, inability to re-organise work among existing staff or to recruit additional

staff, detrimental impact on quality or on performance, insufficiency of work during the periods the employee proposes to work or planned structural changes), or the refusal was based on incorrect fact. There is no challenge to the proportionality of an employer's decision that the employee's need to work flexibility is 'trumped' by considerations of cost or quality etc, though refusal to grant flexible working requests may also breach the Equality Act 2010 (eg where the flexibility is sought to accommodate childcare needs, such needs falling disproportionately on women). Only employees with 26 weeks' continuous service are entitled to make use of the statutory procedure to request flexible working hours.

9. Time off from work on grounds of force majeure (Clause 7)

Employees are entitled by Section 57A ERA to take a reasonable amount of time off during working hours in certain prescribed circumstances including where a dependent falls ill or is injured or assaulted in order to make arrangements for the provision of care for the dependent, or where there is an unexpected disruption or termination of arrangements for the care of a dependent.

There is no upper limit on the period of leave as such but it is clear from the case law that the leave does not enable employees to take time off in order themselves to care for a sick child, except to the extent necessary to deal with an immediate crisis (*Qua v John Ford Morrison Solicitors*).⁶⁵⁴

10. Final provisions (Clause 8)

In the view of the expert the very rigid approach in UK law is arguably inconsistent with Clause 3(a) which provides that Member States and/or social partners may 'decide whether parental leave is granted on a full-time or part-time basis, in a piecemeal way or in the form of a time-credit system, *taking into account the needs of both employers and workers*' (emphasis added). In addition, the fact that the changes resulting from requests for flexible working hours are permanent is not consistent with Clause 6 for the reasons set out in paragraph 8 above. Domestic law in the expert's view is not more favourable than the Directive.

11. Sanctions (Article 2)

A Tribunal may make a declaration of rights and/or award such compensation as is 'just and equitable' for a breach of the parental leave rights (and may award up to eight weeks' pay for a breach of the right to request flexible working). There has not as yet been any guidance in any reported judgment on how to determine what is 'just and equitable' in this context. The Tribunals Service's annual statistics⁶⁵⁵ regarding the quantum of awards does not indicate the amounts awarded in parental leave cases. Further, employees are unlikely, whilst still working for an employer, to commence legal proceedings and the recently introduced Tribunal fees make it very expensive to bring a claim (between about EUR 500 and EUR 1 500).⁶⁵⁶

12. Case law

There is very little case law. The decision in *Qua v John Ford Morrison Solicitors* is mentioned above in relation to emergency dependents' leave.

Equally unhelpful to employees is the decision in *Rodway v New Southern Railways Ltd*⁶⁵⁷ in which the Court of Appeal ruled that a railway worker who was disciplined for taking a day off to look after his son because his former partner, who normally looked after the boy, was unable to do so on a particular day had not been discriminated against in

⁶⁵⁴ [2003] ICR 482.

⁶⁵⁵ <http://www.justice.gov.uk/statistics/tribunals/employment-tribunal-and-eat-statistics-gb>, accessed 6 June 2014.

⁶⁵⁶ These sums comprising the cost of issuing the claim (EUR 200/ £160 or EUR 315/£250 depending on the type of claim, then a further EUR 290/ £230 or EUR 1200/ £950 prior to hearing).

⁶⁵⁷ [2005] ICR 1165.

connection with the exercise of his right to parental leave as he had sought only a day off and not the minimum one-week period to which he was entitled (and which could have been postponed by the employer). The Employment Tribunal had expressed the view that the emergency leave entitlement provided by Section 57A ERA would not have covered the day's absence 'because it did not arise from the unexpected disruption of arrangements for the care of his son'⁶⁵⁸ but there was no appeal on this and neither the EAT nor the Court of Appeal determined this point.

More helpful to employees is *Royal Bank of Scotland v Harrison*⁶⁵⁹ in which the EAT accepted that the claimant was entitled to emergency dependent leave in respect of a day on which her child-minder had given her three weeks' notice that she would be unable to cover. A Tribunal and the EAT accepted that the disruption to the claimant's childcare arrangements was 'unexpected'.

13. Practice and other relevant issues

All of the forms of leave set out in Section 1 above are utilised, although to varying degrees. A TUC study in 2011/12 found that only 1,650 out of 285 000 eligible partners took additional paternity leave⁶⁶⁰ while a study in 2012/13 by commercial law firm EMW found that only 2 per cent of the 209 000 eligible for additional paternity leave made use of the right.⁶⁶¹ In 2012/13, only 209 000 men took OPL whereas 618 000 women took maternity leave, which suggests that a very significant proportion of men do not avail themselves of the right to ordinary paternity leave.⁶⁶²

There are no reliable statistics on the take up of parental leave but the indications that are available suggest that it is very low. By way of example, the *Maternity and Paternity Rights Survey and Women Returners Survey 2009/2010* found that only 7 % of fathers took any unpaid leave off at around the time of the birth of a child. This survey pre-dated the introduction of additional maternity leave and therefore indicates a very low utilisation of parental leave by fathers at the time of the birth. The evidence concerning the broader use by men of parental leave is sketchy.⁶⁶³

The take-up of ordinary and additional maternity leave is fairly high. In 2008 the average period of maternity leave for women was 39 weeks (up from 32 weeks in 2006). It is worth pointing out that statutory maternity pay lasts for only 39 weeks. However, only 69 % of the women surveyed were aware that they were actually entitled to 52 weeks' leave.⁶⁶⁴

The Children & Families Act 2014 will enable maternity leave to be more fully shared between men and women. Given that men typically earn more than women and that additional paternity leave is paid at a very low rate, it is not expected that the introduction of this shared leave will have a huge impact on practices.

⁶⁵⁸ Paragraph 32 cited in the EAT decision at [2005] ICR 75 Paragraph 4.

⁶⁵⁹ [2009] ICR 116.

⁶⁶⁰ BBC News 16 June 2013, <http://www.bbc.co.uk/news/uk-22924708>, accessed 14 April 2014.

⁶⁶¹ See: <http://www.emwllp.com/news/only-2-of-eligible-fathers-take-additional-paternity-leave>, accessed 14 April 2014.

⁶⁶² See: <http://www.emwllp.com/news/only-2-of-eligible-fathers-take-additional-paternity-leave>, accessed 14 April 2014.

⁶⁶³ J. Chanfreau et al. *DWP Research Report No 777*, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/214367/rrep777.pdf, accessed 14 April 2014.

⁶⁶⁴ J. Chanfreau et al. *DWP Research Report No 777* p. 1, available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/214367/rrep777.pdf, accessed 14 April 2014.

Annex 1 Tables¹

<u>AUSTRIA</u>	
Title of the leave (optional)	Parental Leave (<i>Karenz, Elternkarenz</i>)
Duration	Starts after maternity leave, full-time leave until the second birthday of the child with option to shorten the immediate leave period by three months for each parent and to reserve this part for later take up until the seventh birthday of the child.
Age of the child	2 years, in cases of later take-up 7 years. Part-time work with special protection until the fourth, in some cases seventh birthday, can be taken right after maternity leave or after a shortened parental leave period.
Transferable to partner or not?	Fully transferable, parents can decide freely if they want to divide the leave period between them, mandatory minimum duration of one part of leave 2 months, no non-transferable part.
One month non-transferable?	No
Notice period	At the latest 4 months before start of leave period.
Work or length of service requirement	None
Payment	Small Children's Care Benefit (<i>Kinderbetreuungsgeld</i>), means-tested State's transfer with an annual income limit, amount varies according to duration chosen by the parents at application, between EUR 33 for 12 months (plus 2 non-transferable months for the other parent), EUR 26.60 for 15(+3) months, EUR 20.80 for 20(+4) months and EUR 14.53 for 30 (+6) months or between EUR 33 and EUR 66 for 12 (+2) months calculated on basis of previous income.
Adjustment of working patterns / hours after return to work	Yes, until fourth, in some cases seventh birthday of the child.
Time off from work on grounds of force majeure	Yes - in parental leave cases for the rest of the leave period of the absent parent. For children until 12 up to two working weeks paid leave for each parent, in some cases also for step-parents, one week for older children and grown-ups. Leave periods up to three months without employers' pay but with social benefits (<i>Pflegekarenz, Hospizkarenz</i>), in cases of seriously ill children until 18.

¹ For an infographic overview of the length and payment of maternity and paternity leave in the 28 Member States of the EU, please see: http://www.europarl.europa.eu/RegData/etudes/ATAG/2014/545695/EPRS_ATA%282014%29545695_REV1_EN.pdf, accessed 2 February 2015.

<u>BELGIUM</u>	
Title of the leave (optional)	Parental leave.
Duration	For every child, 4 months full time or 8 months half-time or 20 months one-fifth time. Leave can be broken down in periods of 1 month (full-time), 2 months (half-time) or 5 months (one-fifth), or a multiple of each of these lengths.
Age of the child	12 years, 21 if disabled.
Transferable to partner or not?	Individual and non-transferable right for each parent.
One month non-transferable?	Yes as the whole leave is non transferable.
Notice period	Private sector: yes, minimum 2 and maximum 3 months before beginning of leave. Public sector: no, not required.
Work or length of service requirement	Private sector: yes, 12 months with same employer during the period of 15 months preceding notice. Public sector: no, not required.
Payment	No pay but social security benefit: flat rate of EUR 786.78 gross per month for full-time leave, or a fraction if part-time.
Adjustment of working patterns / hours after return to work	Private sector: yes, during 6 months maximum. Public sector: yes, during 6 months maximum in federal administration; not provided in other public services.
Time off from work on grounds of force majeure	Private sector: yes, maximum 10 days unpaid leave per year on any grounds of <i>force majeure</i> . Public sector: yes, maximum 4 days paid leave per year in case of sickness of a close relative.

<u>BULGARIA</u>	
Title of the leave (optional)	Parental leave
Duration	Each parent has the right to six months unpaid parental leave. The parental leave can be used in parts, with the minimum being five days.
Age of the child	After the age of two of the child and until the child turns eight.
Transferable to partner or not?	Yes. Each of the parents (adoptive parents) can now use up to five months of the leave of the other parent.
One month non-transferable?	Yes
Notice period	The person who would like to benefit of the leave has to notify the employer ten days in advance. The leave is regulated as a right of the respective parent and has to be granted by the employer upon receipt of the notice.
Work or length of service requirement	None
Payment	No
Adjustment of working patterns / hours after return to work	Yes, if requested
Time off from work on grounds of force majeure	Yes. The length of this type of leave is unlimited for urgent medical reasons due the condition of a child, limited to 60 calendar days in a calendar year for taking care of a sick child, and up to 10 calendar days in one year for taking care of an adult relative.

<u>CROATIA</u>	
Title of the leave (optional)	Parental leave (<i>roditeljski dopust</i>)
Duration	8 months combined if both parents use the leave. 30 months for third and consecutive children or twins. 6 months if only one parent uses the leave. Leave cannot be used simultaneously by both parents. Piecemeal use possible, maximum two times per year with a minimum duration of 30 days.
Age of the child	8 years
Transferable to partner or not?	Yes
One month non-transferable?	Two months non-transferable
Notice period	No obligation of worker to give notice to employer before taking parental leave for the first time, but if he/she intends to take the unused part of parental leave, notice period is 30 days prior to intended date of leave
Work or length of service requirement	12 months of continuous service or 18 months with interruptions in the last 2 years
Payment	80 % of budget calculation basis (ceiling: EUR 356 (HRK 2 660)) for the first 6 months After 6 months: 50 % of budget calculation basis (EUR 222 (HRK 1 663)) No prior minimum length of service: 50 % of budget calculation basis (EUR 222 (HRK 1 663))
Adjustment of working patterns / hours after return to work	No
Time off from work on grounds of force majeure	Yes, taking care of ill family members. For a child under 7, up to 60 days of sick leave per illness; for a child from seven to 18, up to 40 days of sick leave per illness.

<u>CYPRUS</u>	
Title of the leave (optional)	Parental leave
Duration	18 weeks, 23 weeks if parent is widowed
Age of the child	8 years, 12 years if child is adopted, 18 years if child is disabled.
Transferable to partner or not?	Yes. Only 2 weeks are transferable, provided parent has already taken 2 weeks.
One month non-transferable?	Yes. Only 2 weeks are transferable.
Notice period	Written notice to the employer 3 weeks before the date parental leave starts and its duration.
Work or length of service requirement	6 months with the same employer.
Payment	No
Adjustment of working patterns / hours after return to work	Yes
Time off from work on grounds of force majeure	Yes. 7 days per year (once or piecemeal)

<u>CZECH REPUBLIC</u>	
Title of the leave (optional)	Parental allowance
Duration	Max. 4 years, during the four years, the parent can interrupt the parental allowance and return to work as s/he wants, the duration (and so the amount) of parental allowance can be changed under conditions specified by the law.
Age of the child	Max. 4 years
Transferable to partner or not?	Yes, the whole allowance is transferable, or better said, on disposal to any of the parents.
One month non-transferable?	No
Notice period	None
Work or length of service requirement	No
Payment	Monthly between EUR 278 (CZK 7 500) and EU 426 (CZK 11 500), depending on how long the parent wants to take the leave. Maximum benefit EUR 8 150 in total (CZK 220 000).
Adjustment of working patterns / hours after return to work	Yes
Time off from work on grounds of force majeure	Yes. The length and payment varies widely according to the situation, and the situations are described in a Government order enacting the Labour Code.

<u>DENMARK</u>	
Title of the leave (optional)	Parental leave
Duration	32 weeks Piecemeal way is possible: leave can be taken in small portions until the child reaches the age of 9
Age of the child	9 years
Transferable to partner or not?	Yes. The parents are entitled to 32 weeks of parental leave benefit, which they can share as they please. They are each entitled to absence from work for 32 weeks but between them they will only receive benefit for a period of 32 weeks.
One month non-transferable?	No part of the parental leave is non transferable
Notice period	Yes. 8 weeks after the birth
Work or length of service requirement	At least 120 hours within 13 weeks before the commencement of the period of absence
Payment	Benefit for 32 weeks. Parents are only entitled to wages during absences related to pregnancy and parenthood if such a right follows from a collective agreement or an individual employment contract. If the parent is only entitled to benefit and not to wages he/she will get 90 % of the wages, max 4.075 Danish kroner per week.
Adjustment of working patterns / hours after return to work	Yes
Time off from work on grounds of force majeure	Yes, there is no provision on how much time

<u>ESTONIA</u>	
Title of the leave (optional)	Parental leave
Duration	Three years minus 70 days (70 days is maternity leave). Piecemeal way is possible. According to Article 62(2) of the Employment Contract Act (ECA) a child care leave may be used in one part or in several parts every year.
Age of the child	Up to three years old
Transferable to partner or not?	Yes. Parental leave is transferable (to partner, parent, grandparent, actual caregiver) in the period in the period when a child is three years minus 70 days.
One month non-transferable?	No
Notice period	14 days
Work or length of service requirement	No, but job protected parental leave means that employment relationship exists.
Payment	The parental benefit (100% of previous earnings) is paid until the child reaches the age of 18 months. Parental benefit has a ceiling: The upper limit of the amount of the parental benefit is three times the average salary from the year before last, which in 2014 is EUR 2 378.25 per month. If the parent did not work during the year that precedes the time at which the right to the benefit arises, the parental benefit is paid at the designated benefit base rate, which in 2014 is EUR 320 per month.
Adjustment of working patterns / hours after return to work	No legal requirement about working hours, but could be agreed with employer (not widely used practice). However, the holidays' schedule should take into account parent's need raising a child under 18
Time off from work on grounds of force majeure	Parental leave may be used by one person at a time 3-6 days a year (paid a minimum wage level) 10 days a year (unpaid)

<u>FINLAND</u>	
Title of the leave (optional)	Parental leave (<i>vanhempainvapaa</i>) Care leave (<i>hoitovapaa</i>)
Duration	<i>Parental leave:</i> 158 weekdays (Monday-Saturday) on benefit; the full leave duration of the leave also contains Sundays (which do not bring benefit) Until the child reaches the age of 3 on flat rate benefit Parents may share the leave, and each may take the leave in maximum 2 different periods
Age of the child	Approximately 9 months (parental leave) if no ‘father’s month’ 3 years (care leave)
Transferable to partner or not?	Fully transferable
One month non-transferable?	The ‘father’s month’ is reserved exclusively for the father when it is not used simultaneously with the mother’s maternity leave, but it is not mandatory under EU law
Notice period	Two months For leave period of 12 days or less: one month
Work or length of service requirement	No requirements. The parental leave benefits requires residence (or being social security insured in Finland or in another EU member state) in Finland 180 days before the birth
Payment	The parental benefit paid to the mother is 75 % of the yearly income from work, divided by 300, up to income of EUR 50 606. Above this income the parental benefit to the mother is 32.5 % of the yearly income from work, divided by 300 for the first 30 weekdays. The parental benefit and the paternity benefit paid to the father after the mother’s maternity leave and parental leave period is 75 % of the yearly income from work, divided by 300, up to EUR 50 606. Above this income, 32.5 % of the yearly work income divided by 300 for the first 30 weekdays. After the first 30 weekdays, the parental benefit for both mother and father is 70 % of the yearly work income, divided by 300, up to EUR 50 606; and 25 % of the yearly work income divided by 300 above that sum. Pay only if agreed in a collective agreement, in which case the employer is entitled to the parental benefit. Flat rate benefit under care leave is paid to a family with a child under 3 years old who is not in municipal day care. Many municipalities complement the national home care benefit with a municipal flat rate benefit.
Adjustment of working patterns / hours after return to work	An employee who has worked 6 months during previous 12 months may take partial care leave until the child is in second class at school (8-9 years). The employer may refuse only if leave creates serious harm
Time off from work on grounds of force majeure	For children under 10 years old, a maximum of 4 workdays at a time For other family related situations, a force majeure leave of an unspecified length may be granted

<u>FRANCE</u>	
Title of the leave (optional)	<i>Congé parental d'éducation</i>
Duration	3 years Can be renewed twice, but piecemeal way is not possible
Age of the child	3 years
Transferable to partner or not?	No
One month non-transferable?	Not transferable at all
Notice period	One month if it is taken directly after the maternity leave, otherwise two months
Work or length of service requirement	One Year
Payment	6 months paid, or if both parents take the parental leave then 1 year paid leave for the first child, and for later children 2 years in half if parental leave is shared (EUR 576.24 per month if they take full leave, EUR 438.17 per month if they work no more than half time, and 331.35 per month if they work between 50 and 80 % of a full work schedule.
Adjustment of working patterns / hours after return to work	No
Time off from work on grounds of force majeure	No

<u>GERMANY</u>	
Title of the leave (optional)	Parental and adoption leave (<i>Elternzeit</i>)
Duration	Up to three years 12 months between the 3 rd and 8 th birthday of the child with consent of the employer <i>draft law: up to 24 months between the 3rd and 8th birthday of the child without needing the consent of the employer</i>
Age of the child	3 years or 8 years with consent of the employer <i>draft law: 8 years without consent of the employer</i>
Transferable to partner or not?	Not necessary because every parent can take parental leave for up to 3 years simultaneously or successively or both or for different periods, it is an individual independent right of every parent
One month non-transferable?	All non-transferable as independent right of every parent Question of transferability (in a way) only matters with regard to parental allowances
Notice period	Yes, 7 weeks before
Work or length of service requirement	No
Payment	Parental allowance in the amount of 65 % up to 100 % of the previous income, no less than EUR 300 and no more than EUR 1 800 for a period of up to 14 months, provided that at least 2 months of the parental leave are taken by the other parent (normally the father) <i>draft law: entitlement to an extended duration (not amount) of parental allowances of parents working part-time; entitlement to additional parental allowances for parents working part-time simultaneously for up to 4 months</i>
Adjustment of working patterns / hours after return to work	No entitlement under the law on parental leave Employees may have a right to reduce working time when meeting the requirements of the Part-Time and Fixed-Term Employment Act
Explicit right to return	No
Time off from work on grounds of force majeure	Yes, to care for a sick child up to 10 working days per year (single parents: up to 20 working days per year) per child, maximum total duration for more than two children may not exceed 25 working days per year (single parents: 50 days); up to some months when one parent is caring for a terminally ill child

<u>GREECE</u>	
Title of the leave (optional)	Parental child-raising leave
Duration	Four months minimum, nine months in the public sector Piecemeal way possible – to be agreed between employer and employee
Age of the child	Six; maritime legislation five.
Transferable to partner or not?	Main transposing legislation: non-transferable Maritime legislation and the Civil Servants Code: transferable
One month non-transferable?	Yes, only in maritime legislation
Notice period	Maritime legislation: yes, at least one month at least, extended until the vessel sails into a harbour where the parent's substitute can board Main transposing legislation: no
Work or length of service requirement	One year continuous or interrupted employment with same employer. No such prerequisite in public sector
Payment	Unpaid. Fully paid in the public sector
Adjustment of working patterns / hours after return to work	Maritime legislation: adjustment Civil Servants Code: reduced working time as an alternative to parental leave
Time off from work on grounds of force majeure	On various exclusively provided grounds, depending on the context

<u>HUNGARY</u>	
Title of the leave (optional)	Parental leave
Duration	Following the maternity leave up to the age of three of the child. Piecemeal way is not regulated or prohibited
Age of the child	3 years
Transferable to partner or not?	The issue of transferability is not explicitly regulated however both parents are entitled to the whole parental leave according to the Labour Code
One month non-transferable?	Not stipulated by the law
Notice period	For taking the leave: 15 days; for returning to work: 30 days
Work or length of service requirement	None
Payment	By social security, two types of parental benefits are provided: childcare benefits and childcare fee. Both are family entitlements, except for the childcare fee until the child reaches the age of one, which is provided only for (insured) mothers. The child-care benefits are a flat-rate amount, equal to the amount of the minimum old-age pension (EUR 93; HUF 28 500 in 2014), and are paid until the child reaches the age of three. The childcare fee is paid to insured parents only, from the end of the maternity leave until the child reaches the age of two. The amount of it is equal to 70 % of average daily earnings, with a ceiling of twice 70 % of the minimum daily wage.
Adjustment of working patterns / hours after return to work	The employer is obliged to accommodate the employee's request for part-time work before the child's third birthday. In this case the working hours are equal to half of the normal working hours (daily four hours)
Time off from work on grounds of force majeure	Hungarian law accommodates for urgent family reasons, duration not limited

<u>ICELAND</u>	
Title of the leave (optional)	Parental leave
Duration	4 months Possible to make requests regarding the structure of the leave (piecemeal). Employer shall make efforts to meet the wishes of the employee regarding the structure of the parental leave.
Age of the child	Until the child reaches the age of 8
Transferable to partner or not?	Each parent has an independent right to parental leave which is not transferable
One month non-transferable?	Not transferable at all
Notice period	Within 6 weeks prior to the intended first day of the leave
Work or length of service requirement	When employee has been employed for 6 consecutive months by the same employer
Payment	Unpaid
Adjustment of working patterns / hours after return to work	Not stipulated in the Act No. 95/2000
Time off from work on grounds of force majeure	Parental leave which is taken directly after maternity/paternity leave or in the case of serious illness of the child necessitating the parent's presence, may never be postponed. Parents' joint right to maternity/paternity leave can be extended by the number of days the child has to stay in hospital if more than seven days after birth and up to 3 months in case of serious illness. Regarding force majeure, there is a special Act on payments to parents of chronically ill or severely disabled children, No. 22/2006. Amount of time provided on grounds of force majeure not stipulated in legislation

<u>IRELAND</u>	
Title of the leave (optional)	Parental leave.
Duration	18 weeks <i>or</i> two separate periods of not less than six weeks <i>or</i> by agreement with the employer take leave in shorter blocks <i>or</i> by reducing hours (or a combination of both) up to a limit of 18 weeks.
Age of the child	Eight years (if a child is between six and eight years on the making of an adoption order then leave must be taken within two years from the date of the order); 16 years of the child is sick or disabled.
Transferable to partner or not?	Yes – up to 14 weeks leave is transferable provided both parents work for the same employer and the employer so consents.
One month non-transferable?	Yes.
Notice period	Yes – six weeks.
Work or length of service requirement	One years' continuous service (however, there is provision for one weeks' leave per month of service of the employee has three months' service and the child is near the age threshold).
Payment	None.
Adjustment of working patterns / hours after return to work	Yes – an employee may request changes to his or her working hours; such adjustment is by agreement with the employer.
Time off from work on grounds of force majeure	Yes – three working days in any period of 12 consecutive months or five working days in any period of 36 consecutive months.

<u>ITALY</u>	
Title of the leave (optional)	Parental leave
Duration	10 months, 11 months if working father agrees to take no less than 3 months off work; the modality of application of the parental leave on an hourly basis or as a time-credit system is possible and is stipulated by collective agreements.
Age of the child	8 years
Transferable to partner or not?	Yes, for a length of three months
One month non-transferable?	No
Notice period	Yes; the notice period is stipulated by collective agreements and cannot be less than 15 days.
Work or length of service requirement	Parental leave does not require the fulfilment of contribution or length of service conditions
Payment	Each parent entitled to 30 % of their salary, for 6 months until child reaches age of 3; there are no ceilings to the payment
Adjustment of working patterns / hours after return to work	No
Time off from work on grounds of force majeure	For illness of the child younger than three, without limits; for illness of the child between 3 and 8, 5 days a year; leave of three days off from work per year, for death or serious illness.

<u>LATVIA</u>	
Title of the leave (optional)	Parental leave
Duration	<i>Labour law:</i> 18 months <i>Social insurance rights:</i> allowance until a child reaches age of 12 months or 18 months <i>Piecemeal available:</i> no detailed legal regulation on how; right is scarcely used because of lack of financial compensation after the end of expire of the rights to the statutory insurance allowance (until a child reaches age of 12 months or 18 months)
Age of the child	<i>Labour law:</i> until a child reaches 8 years of age <i>Social insurance rights:</i> allowance until a child reaches age of 12 months or 18 months
Transferable to partner or not?	<i>Labour law:</i> No, individual right <i>Social insurance rights:</i> only one parent is entitled to parental allowance, however they may alternate with each other
One month non-transferable?	Not applicable
Notice period	No
Work or length of service requirement	No
Payment	<i>Labour law:</i> an employer holds no obligation to provide any pay during parental leave <i>Social insurance rights:</i> statutory social insurance system provide for a parental allowance (60 % of the gross salary (social insurance contribution salary) for parents who stop working until a child reaches 12 months of age or 43.75 % of the gross salary for parents who stop working until a child reaches 18 months of age). No ceilings.
Adjustment of working patterns / hours after return to work	yes
Time off from work on grounds of force majeure	Yes, not specified by the law

<u>LIECHTENSTEIN</u>	
Title of the leave (optional)	Parental leave
Duration	Four months, piecemeal way possible on monthly, daily, hourly basis
Age of the child	Three years, adopted children: 5 years
Transferable to partner or not?	Freely transferable between both parents
One month non-transferable?	Legislation does not regulate explicitly
Notice period	Two or three months depending on duration of working contract
Work or length of service requirement	At least one year
Payment	No
Adjustment of working patterns / hours after return to work	Yes
Time off from work on grounds of force majeure	Yes, one to three days per incidence until other care is organised

<u>LITHUANIA</u>	
Title of the leave (optional)	Parental leave (former – the parental leave till the child reaches the age of 3 years)
Duration	Any period after maternity leave (paternity leave) before the child reaches the age of 3 years Piecemeal way possible: Either parent may apply for a portion of parental leave regardless of the length of the leave, until the child reaches the age of 3 (e.g., one week, one year, 3 years, and so on)
Age of the child	3 years
Transferable to partner or not?	Both parents can claim the leave – if one parent takes the leave – another cannot claim it. But they both can switch
One month non-transferable?	No such rule
Notice period	14 days
Work or length of service requirement	No. There is however the requirement to be insured for at least 12 months in the period of last 24 months in order to qualify for social insurance benefit.
Payment	No payment from employer. Only social insurance benefit which is paid during parental leave. Two options for the state social insurance benefit: <ol style="list-style-type: none"> 1) If the person chooses the payment of social benefit until child reaches the age of 1 year – 100 per cent of the insured salary, subject to the minimum and maximum; 2) if the person chooses the payment of social benefit until child reaches the age of 2 year years – 70 percent of the insured salary for the first year and 40 percent for the second year. <p>All the social insurance pabenfits have a ceiling which depends on the ‘average insured salary’ within the country and is consolidated by the Government. The ceiling for parental leave benefit is 3,2 of ‘average insured incomes’, established by the Government – EUR 1 379 (LTL 4 761)</p>
Adjustment of working patterns / hours after return to work	No. The leave means the absence from work
Time off from work on grounds of force majeure	If the person is not on a leave, he can claim days off to take care of the sick family member upon the medical certificate

<u>LUXEMBOURG</u>	
Title of the leave (optional)	Parental leave (congé parental)
Duration	6 month full-time 12 months part-time Piecemeal way is not possible
Age of the child	Up to 5 years of age
Transferable to partner or not?	Parental leave is an individual right. It is not transferable.
One month non-transferable?	All non-transferable
Notice period	First leave must be taken directly after the maternity leave. The notice period is 2 month before beginning of the maternity leave. For the 2 nd parental leave, the notice period is 6 month.
Work or length of service requirement	12 months
Payment	Fixed allowance (EUR 1 778.31, September 2014)
Adjustment of working patterns / hours after return to work	Workers returning from parental leave are entitled to request an adjustment of working patterns/hours. Reply from the employer is required. The request can be refused. In case of acceptance, the change is limited to one year of time.
Time off from work on grounds of force majeure	Working parents are entitled to a period of leave of 2 days a year in case of sickness of a child.

<u>FORMER YUGOSLAV REPUBLIC OF MACEDONIA</u>	
Title of the leave (optional)	Paid and unpaid parental leave
Duration	<ul style="list-style-type: none"> - Paid leave: Starts after maternity leave (45 days after birth). Its duration together with the maternity leave cannot exceed 9 months. - Unpaid leave: After the 9-months paid leave, there is a possibility of three months unpaid leave. Piecemeal way is possible – this unpaid leave could be used (at the parent's request) in up to three different time periods. - Part-time work: In cases of serious disability of a child, the parent is entitled to part-time work with full pay.
Age of the child	<ul style="list-style-type: none"> -Paid leave: Until child reaches the most 9 months. -Unpaid leave: Until the child reaches the age of three. -Part-time work: Until child reaches 18 years.
Transferable to partner or not?	<ul style="list-style-type: none"> -Both the paid and unpaid parental leave can be exercised by the mother, while the father can use the leave only if the mother does not use it. -Part-time work can be exercised by either parent.
One month non-transferable?	No. However, the father is entitled to up to seven days immediately after the birth of the child.
Notice period	Yes. Parent is obliged to announce the starting and end dates of the parental leave to their employer thirty days before the leave starts or ends
Work or length of service requirement	Yes. Six months before the birth of a child.
Payment	<ul style="list-style-type: none"> - Paid leave: 100 % of the average individual salary for the last 12 months (or minimum 6 months), but not higher than the value of two average salaries on national level. - Unpaid leave: Only health insurance. - Part-time work: Full salary as if the worker worked full time.
Adjustment of working patterns / hours after return to work	<p>Yes. There is a ban on night and work after regular working hours unless there is a written consent by the worker.</p> <p>For pregnant women, women who have given birth and breastfeeding women there is ban on work with dangers materials and in difficult conditions.</p>
Time off from work on grounds of force majeure	Yes, parent is entitled to up to 30 days full paid leave in case of illness of child (or other emergency related to the child)

<u>MALTA</u>	
Title of the leave (optional)	Parental Leave
Duration	4 months for each parent and 12 months for a public service employee who has been employed for 12 months. As to piecemeal, parental leave must be availed of in established periods of one month each; unless otherwise provided by collective agreement, the employer and employee may decide together whether the leave be granted on a full time or part time basis, piecemeal or in the form of time-credit system. Therefore agreement – collective or individual- is at the basis of the modalities of enjoyment. In the public service blocks of four, six, nine or twelve months may be used. Four months may be broken down in periods of one month at a time; the Director concerned and the employee may decide that these four months are granted on a full time or a part-time basis, in a piecemeal way or in the form of a time-credit system (Public Service Management Code paras 5.3.3.1 and 2)
Age of the child	8 years
Transferable to partner or not?	Not transferable at all
One month non-transferable?	Not transferable at all, but if both parents are public employees they may share the leave provided that they each take a continuous period.
Notice period	Minimum statutory period of notice of three weeks. In the public service the rule is three months' notice, except in the case where the leave will not exceed three months, in which case three weeks' notice will suffice.
Work or length of service requirement	Public service 12 months. Others, six months.
Payment	Unpaid. Adoption leave is granted in the form of parental leave. A benefit of adoption leave in the public service is that it can be paid for up to 18 weeks.
Adjustment of working patterns / hours after return to work	There is an explicit right to return to the same job or equivalent. Also, a returning employee may request changes in working hours and patters for a specified period, and the employer must consider and respond to this request. Employer and employer must maintain contact during parental leave in order to make arrangements for appropriate reintegration.
Time off from work on grounds of force majeure	Yes, under the Urgent Family Leave Regulations of 2007, in case of sickness or accident, births or deaths of immediate family. No advance notification is required except if possible. Minimum total of 15 hours with pay per year (16 hours for public service employees), deducted from annual leave entitlement.

<u>THE NETHERLANDS</u>	
Title of the leave (optional)	<i>Ouderschapsverlof</i>
Duration	26 weeks (pro rata for part-time employees). Piecemeal way is possible: leave can be divided into a maximum of 6 separate periods, the intervals between each period being no longer than 3 months
Age of the child	Until 8 years.
Transferable to partner or not?	This right is non-transferrable to the other parent.
One month non-transferable?	Not transferable at all
Notice period	Yes: two months
Work or length of service requirement	Yes: the required period is one year.
Payment	Payment of parental leave is up to the discretion of the employer – most of the times, parental leave is unpaid, but under some Collective Labour Agreements (mostly in public service employment) employers do pay (part of) the salary during parental leave.
Adjustment of working patterns / hours after return to work	Yes.
Time off from work on grounds of force majeure	Yes. This calamity leave can range from a couple of hours to a few days.

<u>NORWAY</u>	
Title of the leave (optional)	Parental Leave
Duration	12 months with pay And an additional 12 months without pay Possibility for a piecemeal solution through dividing the leave over a three year period with part-time work and part-time leave, a time-account arrangement.
Age of the child	12 months (or 24 months)
Transferable to partner or not?	Yes, except for 10 weeks reserved to each of the parents (maternity and paternity leave) which is non-transferrable
One month non-transferable?	Yes (included in the 10 weeks mentioned above)
Notice period	Yes, 1 week for leave lasting more than 2 weeks, minimum 4 weeks' notice for leave lasting more than 12 weeks and a minimum 12 weeks' notice for leave lasting more than a year.
Work or length of service requirement	Yes, minimum worked 6 months during the last 10 months before birth
Payment	Depending on the length of leave the employee may receive 80% of full salary or 100% of full salary, upwards limited to maximum EUR 64 650 (NOK 530 220)
Adjustment of working patterns / hours after return to work	Yes
Time off from work on grounds of force majeure	Yes, depends on the situation. The WEA section 12-9 provides for a right to leave in case of sickness of a child or when the usual baby-sitter is sick for as much as 10 days during a year or 15 days when there are two children. If more serious illness has occurred and the child is in hospital and the National Insurance Act (NIA) provides for care-money, the right to leave according to the WEA is expanded to as long as the NIA provides for care-money.

<u>POLAND (I)</u>	
Title of the leave (optional)	Child care leave – <i>urlop wychowawczy</i> (Article 186 LC)
Duration	For a maximum of 36 months Piecemeal is possible, can be taken in maximum 5 pieces Parents may take the childcare leave together for not more than 4 months
Age of the child	5 years
Transferable to partner or not?	All but one month
One month non-transferable?	Yes, but with exceptions (e.g. in cases of death of one parent, or limitation of parental powers)
Notice period	14 days
Work or length of service requirement	6 months, but not with the particular employer with whom the request was filed
Payment	Childcare leave is not remunerated by the employer. Allowances in a form of special supplement for taking care of a child are provided within the social security system, but only to low income families
Adjustment of working patterns / hours after return to work	An employee may file a written request to lower his/her work time to an amount not less than half of the full working time, in the period in which she/he would have been entitled to child care leave (Article 186 ⁷ (1) LC). The employer may not refuse such request.
Time off from work on grounds of force majeure	No

<u>POLAND (II)</u>	
Title of the leave (optional)	Parental leave – <i>urlop rodzicielski</i> (Article 182 ^{1a} LC)
Duration	26 weeks Piecemeal possible – maximum of 3 pieces, each piece must last at least 8 weeks
Age of the child	Not specified in the law, but parental leave should be taken directly after additional maternity leave so in principle no later than when the child is aged 26 weeks
Transferable to partner or not?	Fully transferable
One month non-transferable?	No
Notice period	14 days
Work or length of service requirement	None
Payment	Yes, the employee receives an allowance equal to between 60 % and 80 % of his/her salary, depending on the time it was declared that the leave would be taken No further ceiling to payment
Adjustment of working patterns / hours after return to work	No
Time off from work on grounds of force majeure	None

<u>PORTUGAL</u>	
Title of the leave (optional)	1. Additional parental leave (<i>Licença parental complementar</i>) – to be taken after maternity leave; 2. Special care leave (<i>licença especial para assistência a filho</i>) – other care situations; taken after additional parental leave
Duration	Additional parental leave - 3 months full time / 12 months part-time (piecemeal possible until 3 periods) Special care leave – successive periods of 6 months, up to 2, 3 or 4 years
Age of the child	Additional parental leave – up to 6 years Special care leave – up to 12 years, or regardless the age in case of handicapped/ chronically ill child
Transferable to partner or not?	Additional parental leave – No (individualised right) Special care leave – Yes (the total duration of the leave can be divided between the parents)
One month non-transferable?	Not applicable
Notice period	Additional parental leave – 30 days Special care leave – 30 days
Work or length of service requirement	None
Payment	No payment by the employer; social security allowance on the basis of 25 % of the average salary in the first 3 months (no upper limits)
Adjustment of working patterns / hours after return to work	1. Right to work part-time for 2, 3, or 4 years, until the child reaches 12 years old, or regardless the age in case of handicapped/ chronically ill child 2. Right to flexible working-time arrangements
Time off from work on grounds of force majeure	1. Up to 30 days per year, to take care of children aged under 12, or regardless the age in case of handicapped/ chronically ill child 2. Up to 15 days per year, to take care of children aged over 12 or of other relatives

<u>ROMANIA</u>	
Title of the leave (optional)	Leave for raising children
Duration	1 year or 2 years (depending on the choice made by the parent) (no cumulus with the maternity leave is allowed). Piecemeal way is partially possible within the time period chosen for the leave (1 year or 2 years), e.g. if a worker chooses to take a 1 year parental leave for 4 months, and then go back to work for 3 months, he or she will only be entitled to the remaining 5 months of that year
Age of the child	1 year or 2 years (depending on the choice made by the parent; the amount of the allowance differs)
Transferable to partner or not?	Transferable except for one month that is mandatory for the other parent who did not take parental leave.
One month non-transferable?	Yes.
Notice period	No.
Work or length of service requirement	Established indirectly for 12 months, but it can represent also period of time where the person qualified for unemployment benefits, was a student, was on medical leave or on other type of leave, etc.
Payment	85 % of the average income earned by the insured person in the twelve previous months and it is capped differently depending on the length of the parental leave: for parental leave lasting 1 year: between EUR 112 (RON 500) and EUR 761 (RON 3 400); for parental leave lasting 2 years: between EUR 112 (RON 500) and EUR 268 (RON 1 200).
Adjustment of working patterns / hours after return to work	No. Only women who are breastfeeding their child until the age of one are entitled to take two breaks every day from work in order to breastfeed the child or they are entitled to shorten their work programme by two hours every day.
Time off from work on grounds of force majeure	No. However, the Labour Code provides for the possibility that the employer offers paid days off for exceptional family events or unpaid leave to solve personal matters, if stipulated in the internal regulations or the collective agreement.

<u>SLOVAKIA</u>	
Title of the leave (optional)	Parental leave
Duration	The law does not regulate the length of parental leave, but determines the point in time of its termination by the age of the child
Age of the child	Up to three years (6 years if poor health)
Transferable to partner or not?	Non-transferable
One month non-transferable?	No
Notice period	No
Work or length of service requirement	No
Payment	EUR 204.20 per month up to 3 (6 years if poor health) years
Adjustment of working patterns / hours after return to work	Yes
Time off from work on grounds of force majeure	Yes for a necessary period of time

<u>SLOVENIA</u>	
Title of the leave (optional)	Parental leave
Duration	260 days, which are distributed between the parents. Each of the parents has a right to a parental leave of 130 days. One part of a parental leave, with a maximum of 75 days, can be transferred and used later. Parents who have transferred part of their parental leave may use it in a continuous series in the form of full or partial absence from work, not more than twice a year for a period of at least fifteen calendar days
Age of the child	Maximum of 75 days can be transferred and used before the child finishes first year of primary school.
Transferable to partner or not?	Yes. A mother may transfer 100 days to the father and 30 days are non-transferable; and a father may transfer all 130 days to the mother.
One month non-transferable?	30 days are non-transferable only from mother to father.
Notice period	Parents do not have to inform employers prior to the commencement of the transferred leave because the written agreement, concluded 30 days prior to the expiry of maternity leave, has already been submitted to them. But they have to inform their employer of the change of the use of parental leave within three days after emergence of the reason to change the written agreement.
Work or length of service requirement	In order to be entitled to parental benefits, relevant persons need to be insured pursuant to the Parental Protection and Family Benefits Act before the day of commencement of the individual type of parental leave. If they are no longer insured but were previously insured for at least twelve months in the past three years prior to exercising the right to parental benefits, they are entitled to parental benefits as well.
Payment	Insured persons are entitled to 90 % of the average salary over the twelve months prior to the date on which the benefits were claimed. In addition, the amount of parental benefits may not be higher than two and a half times the average monthly salary in the Republic of Slovenia.
Adjustment of working patterns / hours after return to work	One of the parents who nurses and cares for the child until its third birthday shall have the right to part-time work. A parent who nurses and cares for two children may extend this right until the younger child finishes the first year of primary school.
Time off from work on grounds of force majeure	Workers are entitled to time off from work on grounds of force majeure for urgent family reasons in case of sickness or accident. The duration is limited to seven working days for a child under seven, or to fifteen days for an older, mentally and physically handicapped child. The duration of time off from work for urgent family reasons may be exceptionally extended in special cases such as the sudden deterioration of the health of the child. The related salary compensation is equal to 80 % of the average salary during the preceding year and is paid by the Health Insurance Institute of Slovenia.

<u>SPAIN</u>	
Title of the leave (optional)	i) So called ‘breastfeeding permission’; (ii) Unpaid leave; (iii) Ordinary reduction of working time; (iv) Reduction of working time for caring of a seriously ill child
Duration	i) So called ‘breastfeeding permission’: One hour a day; (ii) Unpaid leave: time off; (iii) Ordinary reduction of working time: from a minimum of one eighth to a maximum of half of worker’s working day; (iv) Reduction of working time for caring of a seriously ill child: minimum of half of worker’s working time
Age of the child	i) So called ‘breastfeeding permission’: 9 months of child’s age; (ii) Unpaid leave: 3 years of child’s age or three years after adoption or fostering resolution; (iii) Ordinary reduction of working time: 12 years of child’s age; (i) Reduction of working time for caring of a seriously ill child: 18 years of child’s age
Transferable to partner or not?	(i) So called ‘breastfeeding permission’: Transferable. It must be taken only by one of the parents, so the hypothetical part of one of the parents is always transferred to the other.; (ii) Unpaid leave: Not transferable; (iii) Ordinary reduction of working time: No transferable; (iv) Reduction of working time for caring of a seriously ill child: Not transferable
One month non-transferable?	(i) So called ‘breastfeeding permission’: It is not established that one month is not transferable
Notice period	(i) So called ‘breastfeeding permission’: No notice is legally established; (ii) Unpaid leave: 15 days’ notice; (iii) Ordinary reduction of working time: 15 days’ notice; (iv) Reduction of working time for caring of a seriously ill child: 15 days’ notice
Work or length of service requirement	No
Payment	(i) So called ‘breastfeeding permission’: Paid by the employer as if it had been effective working time; (ii) Unpaid leave: Unpaid; (iii) Ordinary reduction of working time: Unpaid; (iv) Reduction of working time for caring of a seriously ill child: The working time reduction is not paid by the employer but social security pays the difference until 100 % of the salary of one of the parents.
Adjustment of working patterns / hours after return to work	No, unless it is established by collective agreement
Time off from work on grounds of force majeure	2 days paid leave to the worker when the child has an accident, becomes seriously ill, needs to be hospitalised or undergoes surgery. 4 days if the worker has to move from another municipality

<u>SWEDEN</u>	
Title of the leave (optional)	Parental Leave
Duration	480 days (including maternity leave if relevant)
Age of the child	384 days must be taken before the child reaches the age of 4 Remaining 96 days can be taken until the child reaches the age of 12 Benefit days can be taken piecemeal, day by day, and also as part-time leave (including 3/4, 1/2, 1/4 or even 1/8 of a day)
Transferable to partner or not?	Yes, but 60 full days out of the total share of 480 days must be taken out of each parent
One month non-transferable?	60 days non-transferable
Notice period	Yes – 2 months whenever possible
Work or length of service requirement	Not for the leave itself <i>Requirement for benefit:</i> the first 180 days of income-replacement benefit require 240 days of employment immediately prior to the birth of the child (not necessarily with the current employer, if any) – otherwise benefits are paid at basic level.
Payment	390 full days of income replacement, and 90 full days at minimum level per child to be divided between the parents 60 full days at income replacement are non-transferable Income replacement is paid out at sick-leave level (80 % of income not above 10 ‘basic amounts’ a year (EUR 49 000 a year) recalculated as a daily benefit, or part-time when applicable) If no right to an income-based benefit, benefits are paid during these days at the ‘basic level’ (<i>grundnivå</i>) of EUR 20 per day.
Adjustment of working patterns / hours after return to work	Right to shortened hours (25 %) until the child is 8 years old, regardless of payments of benefits When benefits are paid according to the social security scheme (a maximum of 480 days including maternity leave) there is a flexible right to full or part-time leave – compare above.
Time off from work on grounds of force majeure	Right to occasional parental benefit to care for a sick child (60 days a year until 12 years of age) Right to leave for urgent family reasons Right to leave/reduced hours when caring for severely sick relatives (no maximum duration but limits may be regulated in collective agreements) – maximum 100 benefit days (240 days in the case of caring for a relative with Aids caused within the health care system).

<u>TURKEY</u>	
Title of the leave (optional)	Various. I. For civil servants – 1. Leave in case of illness of a child with disability or a child with a permanent illness; 2. Leave for a valid reason; 3. Sickness and patient-companionship leave; 4. Leave upon marriage or death of a child. II. For workers – 1. Leave upon death of a child; 2. Leave (absence) for a valid reason); 3. Force majeure.
Duration	I.1. up to 10 days per year, piecemeal not possible I.2. up to 10 days per year (piecemeal not possible), additional 10 days granted for valid reasons I.3. 3 months (piecemeal not possible). Additional 3 months and additional 18 months may also be granted I.4. 7 days, piecemeal not possible II.1. 3 days, piecemeal not possible II.2. 2 days
Age of the child	I.1. no age limit I.2. no age limit I.3. no age limit I.4. no age limit II.1. no age limit II.2. no age limit
Transferable to partner or not?	I.1. non-transferable once decided by the parents I.2. non-transferable once decided by the parents I.3. non-transferable once decided by the parents I.4. individual right of the parent – non-transferable II.1. individual right of the parent – non-transferable II.2. individual right of the parent – non-transferable
One month non-transferable?	All: all non-transferable, see above
Notice period	None
Work or length of service requirement	None
Payment	I.1. 100 % remuneration, no ceiling I.2. First 10 days paid, second 10 days considered as part of annual leave, 100 % remuneration, no ceiling I.3. First 3 months paid, second 3 months paid (both 100 % remuneration, no ceiling), 18 months unpaid I.4. 100 % remuneration, no ceiling II.1. Unpaid unless stipulated otherwise in individual/collective labour contract II.2. Unpaid unless stipulated otherwise in individual/collective labour contract
Adjustment of working patterns / hours after return to work	I.1-4. Same job, same working conditions II.1. Same job, same working conditions II.2. Same job, same working conditions
Time off from work on grounds of force majeure	II.3. ‘force majeure’ – 1 week

<u>UNITED KINGDOM</u>	
Title of the leave (optional)	Parental Leave
Duration	18 weeks per child – minimum one week block and maximum 4 weeks in one year unless employer agrees otherwise
Age of the child	Up to 5 th birthday except in the case of adopted children (the sooner of the 5 th anniversary of adoption or the 18 th birthday) and disabled children (18 th birthday)
Transferable to partner or not?	Each parent is entitled to this leave which is therefore not transferable
One month non-transferable?	All non-transferable
Notice period	21 days' notice of leave or expected date of birth or adoption where the leave is to be taken on birth/ adoption
Work or length of service requirement	At least one year's service
Payment	None
Adjustment of working patterns / hours after return to work	Right to request permanent adjustments on return from parental leave or at any other time
Time off from work on grounds of force majeure	Yes – emergency dependent leave, unpaid, as required

Annex II

Questionnaire

Questionnaire for the report *The Implementation of Parental Leave Directive 2010/18 in 33 European Countries*

European Network of Legal Experts in the Field of Gender Equality

Maria do Rosário Palma Ramalho (main author), Petra Foubert and Susanne Burri

1. Introduction

The purpose of this report is to provide information on and present an analysis of the implementation of Parental Leave Directive 2010/18¹ as well as possible weaknesses/lacunae in the existing *acquis*. The focus of this report will be on the way the 33 countries participating in the Gender Network combine the various types of family leave and the extent to which the national approach is in line with EU law.

The topic of leaves aimed at facilitating the reconciliation of work, private and family life has been addressed in several reports of the Gender Network.² In this report, the main focus is on the implementation of the Parental Leave Directive in legislation in the context of reconciliation policies. Attention is also paid to relevant national case law.

Parental Leave Directive 2010/18 replaces Directive 96/34 (which gave legal effect to the Framework Agreement of the European social partners). The European Commission consulted the European social partners in 2006 and 2007 on ways to further improve the reconciliation of work, private and family life and, in particular, the existing legislation on maternity and parental leave, and on the possibility to introduce new types of family-related leaves, such as paternity leave, adoption leave and leave to care for family members (see Preamble 4). Directive 2010/18 puts into legal effect the revised Framework Agreement on parental leave concluded on 18 June 2009 by BUSINESSEUROPE, UEAPME and ETUC, which is annexed to the Directive and should have been transposed by 8 March 2012 (Articles 3(1) and 4).³

2. The legislative context in European Union law

In the first place, the current legal EU framework that is relevant to reconciliation issues consists of specific legal provisions. The Charter of Fundamental Rights of the EU states in Article 33(2) that ‘to reconcile family and professional life, everyone shall have the right to protection from dismissal for a reason connected with maternity, and the right to paid maternity leave and to parental leave following the birth or adoption of a child.’⁴ Pregnancy Directive 92/85 – which is relevant during the period from the beginning of the pregnancy until the end of the maternity leave – aims at protecting the health

¹ Council Directive 2010/18/EU of 8 March 2010 implementing the revised Framework Agreement on parental leave concluded by BUSINESSEUROPE, UEAPME, CEEP and ETUC and repealing Directive 96/34/EC (Text with EEA relevance), OJ L 68, 18.3.2010, pp. 13-20.

² See in particular: A. Masselot, E. Caracciolo di Torella and S. Burri, European Network of Legal Experts in the Field of Gender Equality, *Fighting Discrimination on the Grounds of Pregnancy, Maternity and Parenthood. The application of EU and national law in practice in 33 European countries*, European Commission 2012, available at: http://ec.europa.eu/justice/gender-equality/files/your_rights/discrimination_pregnancy_maternity_parenthood_final_en.pdf, accessed 18 February 2014, and European Network of Legal Experts in the Field of Gender Equality, *Legal Approaches to Some Aspects of the Reconciliation of Work, Private and Family Life in Thirty European Countries*, European Commission 2008, available at: http://ec.europa.eu/justice/gender-equality/files/reconciliationfinal28aug2008_en.pdf, accessed 18 February 2014.

³ An additional period of a maximum of one year could be awarded to Member States if necessary to take account of particular difficulties of implementation by collective agreement (Article 3(2)).

⁴ See S. Koukoulis-Spiliotopoulos ‘The Lisbon Treaty and the Charter of Fundamental Rights: maintaining and developing the *acquis* in gender equality’ in: *European Gender Equality Law Review 1/2008*, pp. 15-24.

and safety of pregnant workers and provides specific forms of leave for pregnant workers and workers who have recently given birth.⁵ Parental Leave Directive 2010/18 lays down minimum requirements designed to facilitate the reconciliation of parental and professional facilities. The Directive applies to all workers who have an employment contract, including part-time workers, fixed-term workers and temporary agency workers (Clause 1). It provides that Member States shall grant all employees a right, in principle non-transferable, to four months' unpaid parental leave which can be used until the child has reached the age of 8, although the precise age is to be determined by the Member States (Clause 2). The two most important changes introduced by the 2010 amendments to the Framework Agreement are the extension of the period that parents can take parental leave (from three to four months) and most of all the fact that, in order to encourage a more equal take-up of leave by both parents, at least one month shall be provided on a non-transferable basis. However, the modalities of application of the non-transferable period are left to the Member States (Clause 3). The Parental Leave Directive further provides protection from discrimination for workers on the grounds of applying for or taking parental leave and stipulates that, at the end of the leave, workers have the right to return to the same job or, if that is not possible, to an equivalent or similar job consistent with their employment contract or employment relationship (Clause 5). Workers also have the right to request changes to their working hours for a limited period; in considering such requests, employers must balance the needs of the workers and the company (Clause 6). The Directive also provides a right to leave on grounds of *force majeure* for urgent family reasons (Clause 7). Finally the Directive also grants these rights in the case of adoption.

In addition to specific rights related to parental leave, sex equality legislation might also apply. Requirements based on working-time periods, mobility or flexibility might for example amount to indirect sex discrimination related to parental leave or another type of leave. Relevant are in particular Article 23 of the Charter of Fundamental Rights of the EU, the principle of equal pay for equal work or work of equal value for male and female workers (Article 157 TFEU) and Recast Directive 2006/54.⁶

Questionnaire for the experts

1. Context

- Please concisely describe the main features of leaves aimed at facilitating the reconciliation of work, private and family life (such as pregnancy, maternity, paternity, parental, adoption, childcare and care leaves) in your country.
- Are parental leave and adoption leave a separate category of leave, or have they been combined into one single category with other forms of family leave, in particular maternity leave for mothers? In the latter case, does this raise any issues in relation to compliance with either this Directive or Pregnancy Directive 92/85?
- Please explain the notion of parental leave in your country in relation to other types of leave, in particular in relation to maternity, paternity, childcare and other care.

⁵ Council Directive 92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding, OJ [1992] L348/1.

⁶ Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast), OJ [2006] L204/23.

2. Implementation of Directive 2010/18

- When and how has Directive 2010/18 been implemented in your country? Please specify the implementing legislation and/or national collective agreement(s).
- Has your country drawn up and published tables to illustrate the correlation between the Directive and transposition measures (see Preamble 16)?

3. Purpose and scope (Clause 1)

- Is the national legislation applicable to both the public and the private sector?
- Does the scope of the national transposing legislation include contracts of employment or employment relationships related to part-time workers, fixed-term contract workers or persons with a contract of employment or employment relationship with a temporary agency?

4. Parental leave (Clause 2)

- What is the total duration of parental leave? Has the duration of parental leave been revised with the entry into force of Directive 2010/18? Is there a difference in the duration of parental leave in the public sector and the private sector?⁷
- What is the child's maximum age for the parent to be entitled to parental leave? Is the age limit the same for adopted children?
- Is the right of parental leave individual for each of the parents?
- Is there a possibility for the one parent to transfer part of the parental leave to the other parent? If such a transfer is possible, does the 'donor parent' retain the right to at least 1 month of leave for his/her own use?
- Is parental leave available in case of surrogacy? If so, who is entitled to which rights?

5. Modalities of application (Clause 3)

- What form can parental leave take (full-time or part-time, piecemeal, or in the form of a time-credit system)? Do the various available options allow taking into account the needs of both employers and workers and if so, how is that done?
- Is there a notice period and if so, how long is it? Does the national legislation take sufficient account of the interests of workers and of employers in specifying the length of such notice periods and how is that done?
- Is there a work and/or length of service requirement in order to benefit from parental leave? If so, how long is the required period of service and does it exceed one year?
- In case of successive fixed-term contracts with the same employer (as defined in Council Directive 1999/70/EC on fixed-term work), is the sum of these contracts taken into account for the purpose of calculating the qualifying period?
- Are there situations where the granting of parental leave may be postponed for justifiable reasons related to the operation of the organisation?
- Are there special arrangements for small firms?
- Are there any special rules/exceptional conditions for access and modalities of application of parental leave to the needs of parents of children with a disability or a long-term illness?

6. Adoption (Clause 4)

- Are there additional measures to address the specific needs of adoptive parents?

⁷ If the provisions applicable to the public and the private sector differ, please address the two sectors separately.

7. Employment rights and non-discrimination (Clause 5)

- Are there provisions to protect workers against less favourable treatment or dismissal on the grounds of an application for, or the taking of, parental leave?
- Do workers benefitting from parental leave have the right to return to the same job or, if this is not possible, to an equivalent or similar job consistent with their employment contract or relationship?
- Are rights acquired or in the process of being acquired by the worker on the date on which parental leave starts maintained as they stand until the end of the parental leave?
- What is the status of the employment contract or employment relationship for the period of the parental leave?
- Is there continuity of the entitlements to social security cover under the different schemes, in particular healthcare, during the period of parental leave?
- Is parental leave remunerated by the employer? If so, how much and in which sectors?
- Does the social security system in your country provide for an allowance during parental leave? If so, how much and in which sectors?

8. Return to work (Clause 6)

- Can workers returning from parental leave request changes to their working hours and/or patterns for a set period of time? Are employers obliged to consider and respond to such requests and what guarantees are there to ensure that they take into account their own as well as the workers' needs? Are such requests subject to certain conditions (e.g. minimum period of employment with the same employer)?
- Are there any mechanisms to promote/ensure that workers and employers will maintain contact during the period of leave and make arrangements for any appropriate reintegration measures?

9. Time off from work on grounds of force majeure (Clause 7)

- Are workers entitled to time off from work on grounds of force majeure for urgent family reasons in case of sickness or accident?
- Have the conditions of access to such time off from work or more detailed rules been further specified? If so, how?
- Has the entitlement to such time off from work been limited to a certain amount of time per year and/or per case? If so, how?

10. Final provisions (Clause 8)

- In your view, have all minimum requirements been specified in the Directive? If not, please explain your assessment.
- In your view, regarding which issues does the national legislation apply or introduce more favourable provisions?

11. Sanctions (Article 2)

- Does the national legislation provide for effective, dissuasive and proportional sanctions for violations of the rules provided by the Directive? What is the system of sanctions?

12. Case law

- Are you aware of any case law (or legal provision) relating to parental, adoption and/or time-off leave that is contrary to the relevant case law of the CJEU? See for a recent overview Section 2.3 of the executive summary of the report *Fighting Discrimination on the Grounds of Pregnancy, Maternity and Parenthood. The application of EU and national law in practice in 33 European countries*, European Commission 2012, available at: http://ec.europa.eu/justice/gender-equality/files/your_rights/discrimination_pregnancy_maternity_parenthood_final_en.pdf.
- Is there any national case law relating to parental, adoption or time-off leave which provides more favourable rights than the provisions of the Directive, existing national provisions and/or case law of the CJEU? If so, please concisely describe the relevant case(s).

13. Practice and other relevant issues

- Are the types of leave described in Section 1 actually used in practice?
- If so, are they taken by both parents, or more frequently by the mothers? Please include data and/or references to data if available.
- Are there positive action measures at national level to promote a more balanced share of family responsibilities between both parents in relation to these leaves? If so, please describe them concisely.
- Are there still any relevant gaps at national level? If so, please describe them concisely.
- Are there any other relevant issues that you would like to mention which have not yet been addressed in this report?

14. Relevant literature

- Please identify the most significant (national) academic literature in relation to reconciliation issues and parental leave. (Limit your reference to a maximum of 5 references).

Annex III

Bibliography

Books and chapters in books

A. Andersen et al. *Ligestillingslovene med kommentarer (Equality law with commentary)*, Copenhagen 2010.

A. Andersen & M. Krarup *Barselsregler – fleksibilitet, fravær og dagpenge (Maternity Rules – flexibility, absence, and benefits)*, Copenhagen 2004.

O. Anttila ‘Siunatussa tilassa? Raskaussyrjinnän kielto tasa-arvolain ja Euroopan unionin tuomioistuimen oikeuskäytännössä’ (‘In blessed state? The prohibition of pregnancy-based discrimination under the Act on Equality between Women and Men and in the case law of the EU Court’) in: J. Kantola et al. (eds.) *Tasa-arvo toisin nähtynä* pp. 226-244, Helsinki, Gaudeamus 2012.

A. Atmanaviciene *Moteru diskriminacija darbe Lietuvoje (Discrimination of Women at Work in Lithuania)*, 2006.

H. Aune ‘Fedrekvoten, normer og stereotype kjønnsroller: “...på noen områder kan jussen være en spydspiss i samfunnsutviklingen”’ (‘The fathers quota, norms and gender stereotypes. “... on some areas the law may act as a spear pointing at a direction of societal development”’), in: A. Sysendalen et al. (eds.) *Velferd og rettferd. Festskrift til Asbjørn Kjønstad 70 år*, pp. 35-48, Gyldendal Juridisk forlag 2013.

K. Bakirci ‘Parental Leave’, in: Z. Stange et al. (eds.) *Encyclopedia of Women in Today's World*, Vol. 3, USA, Sage Publication 2011.

H. Biin et al. *Eesti vanemapuhkuste süsteemi analüüs (Estonian parental leaves system)* Tallinn, Praxis 2013, available at: http://www.sm.ee/fileadmin/meedia/Dokumendid/Sotsiaalvaldkond/Uuringud_anal%C3%BC%C3%BCsid_ja_rahvusvahelised_kogemused/L%C3%B5plik_vanempuhkuste_aruanne_P RAXIS.pdf, accessed 2 April 2014.

M. Bolger et al. ‘From Maternity to Family Rights’ in: F. Meenan (ed.) *Employment Equality Law* pp. 230-234 Dublin, Round Hall Thomson Reuters 2012.

R. Borg *Males in the Public Service and the Use of Family-Friendly Measures with Focus on Parental Leave*, Dissertation, 2006, University of Malta.

K. BurgerEhrnhofer et al. *Mutterschutzgesetz und Väterkarenzgesetz*, Wien, 2013 (Legal Commentary).

J. Cabeza-Pereiro & B. Fernandez-Docampo (eds.) *Conciliación de la vida familiar y laboral y corresponsabilidad entre sexos (Reconciliation of work and family life and co-responsibility between men and women)*, Valencia, Tirant lo blanch 2011.

L. Calafà *Congedi e rapporto di lavoro (Leaves and employment relationship)* Padova, Cedam 2004.

L. Calafà *Paternità e lavoro (Fatherhood and employment)* Bologna, Il Mulino 2007.

- L. Carlson *Searching for Equality, Sex Discrimination, Parental Leave and the Swedish Model with Comparisons to EU, UK and US Law* Uppsala, Iustus Förlag 2007.
- G. Ercher & E. Stech *Kommentar Mutterschutzgesetz, Väterkarenzgesetz*, Wien, 2005 (Legal Commentary).
- J. Fagnani & A. Math 'The politics of parental leave policies in France', in S. Kamerman & P. Moss (ed.) *The Politics of Parental Leave Policies* pp. 103-118, Bristol, England, Policy Press 2009.
- M.A. Falguera-Baró *Filiación y familia. Sus efectos en el contrato de trabajo (Parenting and family: Its effects on the contract of employment)*, Albacete, Bomarzo 2004.
- B. Godlewska-Bujok *Implementacja dyrektywy 2010/18/UE dotyczącej urlopu rodzicielskiego (Implementation of Directive 2010/18/EU on Parental Leave)*, Prawo Europejskie w praktyce, December 2013.
- A. Grech *Parental Leave: A critical review*, Dissertation, 2007, University of Malta.
- I. Grgurev 'Diskriminacija trudnih radnica: kako uspješno pomiriti trudnoću sa zahtjevima tržišta' ('Discrimination against pregnant workers: how to successfully reconcile pregnancy with market demands') in: Ž. Potočnjak et al. (eds.) *Perspektive antidiskriminacijskog prava (Perspectives on anti-discrimination law)*, pp. 133-152, Zagreb, Pravni fakultet Sveučilišta u Zagrebu, 2014.
- D. Gumbrevičiūtė-Kuzminskienė *Lygių galimybių principo įgyvendinimas Europos Sąjungos ir Lietuvos darbo teisėje (The Implementation of the Principle of Equal Opportunities in the Law of the European Union and Lithuania (Doctoral Dissertation))* Vilnius, Mykolo Romerio universitetas 2011.
- G. J. J. Heerma van Voss *Inleiding Nederlands Sociaal Recht (Introduction to Dutch Social Law)* Den Haag, Boom Juridische Uitgevers 2011.
- I. Ilkcaracan (ed.) *Emek Piyasasında Toplumsal Cinsiyet Eşitliğine Doğru: İş ve Aile Yaşamını Uzlaştırma Politikaları (Towards Gender Equality in the Labour Market: The Policies for Reconciliation of Family and Working Life)*, Metis publication, Istanbul 2011.
- D. Izzi *Eguaglianza e differenze nei rapporti di lavoro (Equality and differences)* Napoli, Jovene 2005.
- M. Karu *Fathers and parental leave: slow steps towards dual earner/dual carer family model in Estonia* Tartu, Tartu University Press 2011, available at: http://dspace.utlib.ee/dspace/bitstream/handle/10062/18103/karu_marre.pdf?sequence=1, accessed 1 April 2014.
- E. Kocher et al. *Das Recht auf eine selbstbestimmte Erwerbsbiografie. Arbeits- und sozialrechtliche Regulierung für Übergänge im Lebenslauf – ein Beitrag zu einem sozialen Recht der Arbeit* Baden-Baden, Nomos 2013.
- W. Kohte "'Return to work' – europäische Impulse und deutsche Handlungsmöglichkeiten", in: C. Hohmann-Dennhardt et al. (eds.) *Geschlechtergerechtigkeit. Festschrift für Heide Pfarr* pp. 489-503, Baden-Baden, Nomos 2010.
- K. Koldinská *Gender a sociální právo: rovnost mezi muži a ženami v sociálněprávních souvislostech* Praha, C.H. Beck 2010.

- A. Křížková *Práce a péče: proměny 'rodičovské' v České republice a kontext rodinné politiky Evropské unie (Work and care: changes of parental leave in the Czech Republic and context of family policy of the European Union)* Praha, Sociologické nakladatelství (SLON) 2008.
- J. Lammi-Taskula *Parental Leave for Fathers? Gendered Conceptions and Practices in Families with Young Children in Finland* (academic dissertation), STAKES Research Report 166, Gummerus 2007.
- F. Lousada-Arochena *Permiso de paternidad y conciliación masculina (Paternity leave and masculine reconciliation)*, Albacete, Bomarzo 2008.
- P. Markova 'Reconciliation policies, parental leaves and employment in Eastern Europe. The case of Bulgaria', in: J. Cabeza Pereiro & M. Fernandez Prieto (eds.), *Reconciliation, coresponsibility and employment: international experiences* p. 87, Thomson Reuters (Legal) 2012.
- F. Meenan 'Pregnancy, Maternity, Adoptive, Parental, *Force Majeure* and Carers' Leave' in: F. Meenan (ed.) *Employment Law* Dublin, Round Hall Thomson Reuters 2014.
- M. H. J. Miltenburg *Arbeid en zorg: vakantie, verlof en aanpassing arbeidsduur (Work and care: holidays, leave and working time adjustment)* Zutphen, Paris 2008.
- D. Petrylaitė et al. *Europos Sąjungos teisės aktų įgyvendinimas Lietuvos darbo teisėje (The Implementation of European Union Legislation in Lithuanian Labour Law)* Vilnius, Registrų centras 2008.
- M. Polidano *An Analysis of Policies Encouraging Female Participation in the Local Workforce*, MBA Dissertation, 2013, University of Malta.
- M. Ramalho 'The importance of a balanced reconciliation of family and working life between men and women for the practical implementation of the gender equality principle in the employment area' in: Prof. Telles (ed.) *90 Anos. Homenagem da Faculdade de Direito de Lisboa*, pp. 909-919 Coimbra, 2007.
- M. Ramalho *Tratado de Direito do Trabalho, II – Situações Laborais Individuais (Treaty on Labor Law, Part II – Employment Contract)* 4th ed. Coimbra, Almedina 2012.
- M. Ramalho & H. Perista 'Concilier famille et travail au Portugal: droit et pratiques' in: *Concilier famille et travail: droits et pratiques* pp. 191-217, Brussels, Bruylant 2005.
- E. Rodriguez-Rodriguez *Instituciones de conciliación de trabajo con el cuidado de familiares (Institutions for the conciliation of work and family care)*, Albacete, Bomarzo 2010.
- W.L. Roozendaal *Werk en Privé; de strijd om tijd in het arbeidsovereenkomstenrecht (Work and private; the battle for time in employment law)* Dissertation University of Nijmegen, 2011.
- V. Štangová *Rovné zacházení a zákaz diskriminace v pracovním právu* Plzeň, Vydavatelství a nakladatelství Aleš Čeněk 2010.
- A. M. Świątkowski *Kodeks pracy: Komentarz (Labour Law: Commentary)* C.H. Beck, Warsaw 2012.
- C. Valentini *O i figli o il lavoro (Either children or work)* Milano, Feltrinelli 2012.

S. Vella *The Role of the European Union in Promoting Gender Equality in the Member States: the Directives on Maternity and Parental Leave* Dissertation, 2011, University of Malta.

P. Vielle *La sécurité sociale et le coût indirect des responsabilités familiales*, Bibliothèque de la Faculté de droit de l'U.C.L., vol XXXI, Bruylant, 2001.

E. Vigerust 'Vern mot graviditetsdiskriminering i arbeidsforhold' ('Protection against pregnancy discrimination in employment') in: A. Hellum & K. Ketscher (eds.) *Diskriminerings- og likestillingsrett* Oslo, 2008.

J. Julén Votinius 'A Blessing or a Ban? About the Discrimination of Pregnant Job Seekers' in: A. Numhauser-Henning (ed.) *Legal Perspectives on Equal Treatment and Non-discrimination*, The Hague, Kluwer Law International 2001.

J. Julén Votinius *Föräldrar i arbete* Stockholm/Göteborg, Makadam 2007.

J. Julén Votinius 'Troublesome Transformation' in: M. Rönmar (ed.) *Labour Law: Fundamental Rights and Social Europe, Swedish Studies in European Law Vol. 4* Oxford, Hart Publishing 2011.

Articles

O. Alarotu 'Perheen ja pätkätyön yhdistäminen: Raskaussyrjinnän kiellosta määräaikaisissa palvelussuhteissa' ('Combining family and fixed-term work: On the prohibition of pregnancy-based discrimination in fixed-term employment relations'), *Oikeus* 32:4 (2003), pp. 376-396.

H. Aune and G. Nylander 'Barseltid et faktum. Barselpermisjon en rettslig sannhet' ('Maternity time a fact. Maternity leave a legal fact'), *forthcoming* in a Nordic journal, 2014.

Z. Blaskó 'Három évig a gyermek mellett – de nem minden áron. Közvélemény a kisgyermekes anyák munkába állásáról' ('Stay at home for three years – but not at all costs. Social values on employment of mothers of young children in Hungary'), *Demográfia* 2011/1 (2011), pp. 23-45.

I. Bunić 'Diskriminacija trudnica na hrvatskom tržištu rada' ('Discrimination against pregnant women on the Croatian labour market'), *Socijalna politika i socijalni rad* Vol.1 No.1 (June 2013), pp. 100-128.

E. Claeys 'De ontslagvergoeding van een werknemer in deeltijds ouderschapsverlof wordt berekend op basis van het voltijdse loon' ('Payment in lieu due to an employee in half time parental leave must be based on full-time remuneration'), *Chroniques de droit social* (2010), p. 353.

N. Daukantiene 'Darbo rinkos pokyčiai Lietuvoje: moterų ir vyrų padėties aspektai' (Changes in the Lithuanian Labour Market: the Situation of Women and Men), *Sociologija Filosofija* No. 4 (2006), pp. 46–54.

A. Dragovic 'Low fertility policies and quality of life in Macedonia' *Review of Social Policy* No. 2 (2008), available at: <http://fzf.ukim.edu.mk/files/srsp/spisanie/revija%20%20final.pdf>, accessed 10 June 2014.

Z. Drjenovsky 'Kismamák a munkahelyen, avagy hogyan számíthat a munkahely a nőkre a gyermekvállalást követően?' ('Mothers at work, or how can an employer count on women after childbirth?') *Munkaiügyi Szemle* 2010/2 (2010), pp. 95-102.

European Network of Legal Experts in the Field of Gender Equality, M. A. Ballester-Pastor, 'Legal Effects of the Economic Crisis on Gender Equality in Spain: Effects on the Right to Reconciliate Work and Family after the 2012 Labour Law Reform', in: *European Gender Equality Law Review No. 2/2012*, Commission 2012, available at: http://ec.europa.eu/justice/gender-equality/files/law_reviews/egelr_2012-2_web_final_en.pdf, accessed 11 April 2014.

European Network of Legal Experts in the Field of Gender Equality, M. Ramalho 'Reconciling Family and Professional Life and the Gender Equality Principle in Employment' in: *European Gender Equality Law Review 2/2009*, pp. 7-15, European Commission 2009, available at: http://ec.europa.eu/justice/gender-equality/files/egelr_2009-2_en.pdf, accessed 14 April 2014.

A. Gardin 'Maternité et éducation des enfants (à la recherche de l'introuvable égalité professionnelle entre les femmes et les hommes)', *Revue de jurisprudence sociale* no. 11 (2009), p. 727.

D. Gottardi 'La condivisione delle responsabilità genitoriali in salsa italiana' ('The Italian way to the sharing of parental responsibilities') in: *Lavoro e Diritto* no. 3/4 Il Mulino, Bologna, (2012), p. 613.

I. Grgurev & P. Ceronja 'Opoziv imenovanja trudne članice uprave društva kapitala – spolna diskriminacija?' ('Revocation of the appointment of a pregnant member of the board – gender discrimination?'), *Zbornik Pravnog fakulteta u Zagrebu* Vol. 61 No. 6 (December 2011), pp. 1881-1919.

The Hon. Ms J. F. Geoghegan 'Protective Measures for Pregnant Workers in the Workplace' *Irish Employment Law Journal* Vol. 8(2) (2011) pp. 36-49.

W. Han et al. 'Parental leave policies and parents' employment and leave-taking' *28 Journal of Policy Analysis and Management* (2009) pp. 29-54.

J. Hofkens 'Het ouderschapsverlof' ('Parental leave'), *Journal des tribunaux du travail* (1998) p. 33.

J. Jacquemain 'Congé parental: une transposition indigne', *Statut des administrations locales et provinciales – Actualités en bref*, Kluwer no. 254 (June 2012) p. 3.

M. Karu 'Parental Leave in Estonia: Does Familisation of Fathers Lead to Defamilisation of Mothers?' *Nordic Journal of Feminist and Gender Research* 2 No. 20 (2012) pp. 94-108.

S. Koukoulis-Spiliotopoulos 'The harmonisation of family and professional life of men and women: Community and national *acquis*' (CS 3216/2003) *Διοικητική Δίκη (Administrative Trial)* (2004) pp. 572-592.

S. Koukoulis-Spiliotopoulos 'Retirement and harmonisation of family and work; issues of substantive gender equality and judicial protection (ECJ 26.3.2009 C-559/07)' *Επιθεώρησις Εργατικού Δικαίου (Social Security Law Review)* (2009) pp. 753-785.

D. Kutsar & H. Tarum 'Eesti vanemahüvitis Euroopa Liidu tööhõive strateegilise eesmärgi taustal' ('Estonian parental benefit in the framework of the European employment strategy'), *Riigikogu Toimetised (RiTo)* 25, (2011) available at: <http://www.riigikogu.ee/rito/index.php?id=14435>, accessed 1 April 2014.

M. Latos-Miłkowska ‘Urlop rodzicielski’ (‘Childcare leave’), *Monitor Prawa Pracy* No. 8, 2013.

B. Moslavac ‘Primjena načela jednakog postupanja prema samozaposlenim radnicima i radnicama’ (‘Application of the principle of equal treatment of self-employed workers and workers’), *Radno pravo* 10/2013 (October 2013) pp. 17-24.

G. Nassibi et al. ‘Geschlechtergleichstellung durch Arbeitszeitsouveränität’, *Zeitschrift des Deutschen Juristinnenbundes (djbZ)* 3/2012 (2012) pp. 111-116.

P. Petroglou ‘Comments on CS 3216/2003’ *Επιθεώρησης Δικαίου Κοινωνικής Ασφάλισης (Review of Social Security Law)* (2003) pp. 900-901.

S. Sabotić ‘Radna prava trudnica zaposlenih temeljem ugovora o radu na određeno vrijeme’ (‘Operating rights of pregnant employees under a contract of employment for a specific time’), *Radno pravo* 12/2003 (December 2013) pp. 18-33.

M. A. J. M. Sprundel-Jansen ‘Aanpassing van de arbeidsduur of ouderschapsverlof?’ (‘Adjustment of working hours or parental leave?’) *Arbeidsrecht: maandblad voor de praktijk* 5 (2011) pp. 3-7.

M. Štěpánková ‘Analýza – mateřská, rodičovská dovolená, čerpání peněžité pomoci v mateřství a rodičovského příspěvku’ (‘Analysis – maternity and parental leave, claiming financial aid in maternity and parental allowance’), *Gender Studies* (2011) available at: <http://www.genderstudies.cz/download/ANALYZA.pdf>, accessed 10 April 2014.

A. Stergiou ‘The slow emergence of paternity from the harmonisation of professional and family life’, *Επιθεώρησης Εργατικού Δικαίου (Labour Law Review)* (2013) pp. 369-403.

M. Vassileva ‘Special protection of pregnant women and mothers’ *Bulletin Labour and Law*, 2011.

M. Vassileva ‘New opportunities for combining family and professional obligations’ *Bulletin Labour and Law*, 2012.

Reports

Centre for Research and Policy Making, M. Risteska et al. *Perspectives of rural women*, 2012, available at: <http://www.unifem.sk/uploads/doc/MKDweb2.pdf>, accessed 10 June 2014.

Confederation of the Independent Trade Unions (Bulgaria) (KNSB) *Problems and Policies for balance of family and professional life* 2012, available at: <http://www.knsb-bg.org/>, accessed 18 July 2014.

Department of Work and Pensions (UK), J. Chanfreau et al. *Maternity and Paternity Rights and Women Returners Survey 2009/2010* (DWP Research Report No. 777).

B. Grévy & P. Dole *L'égal accès des femmes et des hommes aux responsabilités familiales et professionnelles*, La documentation française, 2011, available at: <http://www.ladocumentationfrancaise.fr/var/storage/rapports-publics/114000300/0000.pdf>, last accessed 6 April 2014.

Gender Studies o.p.s., J. Debrecéniová ‘State Social Security Benefits for the “Support of Families” in Slovakia: Analysis of Selected Provisions Passed at the Time of the Recession’ in: *Comparative analysis of the work/life balance situation in the Czech Republic, Poland, Germany and Slovakia Gender Studies 2011*, pp. 64-76, available in English at: www.genderstudies.cz/download/AnalysisEN.pdf, accessed 28 April 2014.

International Labour Organisation, M. Kazandziska et al. *The gender pay gap in the Former Yugoslav Republic of Macedonia*, 2012, available at: http://www.ilo.org/wcmsp5/groups/public/---europe/---ro-geneva/---sro-budapest/documents/publication/wcms_180638.pdf, accessed 10 June 2014.

A. Kolbergyste *Darbo ir šeimos sferu derinimo galimybės darbdaviu požiūriu* (Employers’ Attitudes towards a Combination of Work and Family Life), available at: http://www.lygus.lt/seimairdarbas/files/MIC_magistrinis.pdf, accessed 14 October 2012.

KPMG *Etude d’évaluation de l’impact du congé parental au Grand-Duché de Luxembourg*, November 2002.

Les cahiers de la FOPES, S. Khayati *Le congé parental des pères: un outil de promotion pour la coparentalité?*, June 2008.

Likestillings- og diskrimineringsombudet (the Norwegian Gender Equality Ombud) *Forbudet mot forskjellsbehandling pga. graviditet og foreldrepermisjon på arbeidslivets område – en oppsummering* (The prohibition against discrimination because of pregnancy and parental leave in employment – a summary), report 2013, available at: <http://www.ldo.no/Global/Diverse%20PDF/Graviditets-%20og%20foreldrepermisjon.pdf>, accessed 9 April 2014.

Ministère de l’Égalité des chances *Le rôle des hommes dans la promotion de l’égalité entre les femmes et les hommes*, 2006, available at: http://www.mega.public.lu/fr/publications/brochures-etudes/2008/promotion-egalite/Temoignages_d_hommes.pdf, accessed 6 April 2014.

Ministerie van Sociale Zaken en Werkgelegenheid, M. Beeksma & L. Junger-Van Hoorn *Faciliteiten arbeid en zorg 2009. Een onderzoek naar CAO-afspraken met betrekking tot arbeid- en zorgfaciliteiten* (Work and care facilities in 2009. A study of collective agreements regarding labor and care facilities) Den Haag, Directie Uitvoeringstaken Arbeidsvoorwaardenwetgeving 2010.

Ministry for Family, Senior Citizens, Women and Youth (ed.) *Elterngeld und Elternzeit 2013* Berlin 2013, <http://www.bmfsfj.de/RedaktionBMFSFJ/Broschuerenstelle/Pdf-Anlagen/Elterngeld-und-Elternzeit-2013.pdf>, accessed 12 April 2014.

Observatoire de la Responsabilité Sociétale des Entreprises *L’équilibre travail/vie familiale, Pratique d’égalité professionnelle en entreprise*, March 2009, available at: http://www.egaliteprofessionnelle.org/maj/_files/upload/documents/type-3/fiche%2018_equilibre.pdf, last accessed 6 April 2014.

M. Ramalho *Protection de la maternité et articulation de la vie familiale et de la vie professionnelle par les hommes et par les femmes*, Proceedings of the European Congress of the European Women’s Lawyers Association, 20 September 2002, Dalloz, Paris.

HOW TO OBTAIN EU PUBLICATIONS

Free publications:

- one copy:
via EU Bookshop (<http://bookshop.europa.eu>);
- more than one copy or posters/maps:
from the European Union's representations (http://ec.europa.eu/represent_en.htm);
from the delegations in non-EU countries
(http://eeas.europa.eu/delegations/index_en.htm);
by contacting the Europe Direct service (http://europa.eu/europedirect/index_en.htm)
or calling 00 800 6 7 8 9 10 11 (freephone number from anywhere in the EU) (*).

(*). The information given is free, as are most calls (though some operators, phone boxes or hotels may charge you).

Priced publications:

- via EU Bookshop (<http://bookshop.europa.eu>).

